



Nebraska Council of School Administrators

Revised, 1997

Nebraska Student Discipline Act

*[As amended by LB 1250 (1994), LB 658 (1995), LB 1050 (1996),
LB 232 (1997), recodified by LB 900 (1996)]*

NOTICE: This outline is not intended to replace regular use and reliance upon the Nebraska Revised Statutes and school district policy in student disciplinary actions, and is not intended to be as used as school district policy.

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Nebraska Student Discipline Act

Outline

- I. How the Act is cited.** Sections 79-254 to 79-294 shall be known and may be cited as the Student Discipline Act. *[Ref. § 79-254]*
- II. Purpose of the Act.** The purpose of the Student Discipline Act is to assure the protection of all elementary and secondary school students' constitutional right to due process and fundamental fairness within the context of an orderly and effective educational process. The sanctions defined in the act shall be interpreted at all times in the light of the principles of free speech and assembly protected under the Constitution of Nebraska and the United States Constitution and in recognition of the right of every student to public education. *[Ref. § 79-255]*
- III. Authority of School Board and School Personnel.**
- A. Generally.** The school board or board of education may authorize the emergency exclusion, short-term or long-term suspension, expulsion, or mandatory reassignment of any pupil from school for conduct prohibited by the board's rules or standards established pursuant to the Student Discipline Act if such sanction complies with the procedures required by the Act. *[Ref. § 79-257]*
 - B. Additional Powers.** The school board or board of education may by rule amplify, supplement, or extend the procedures provided in the Student Discipline Act if such actions are not inconsistent with the act. *[Ref. § 79-261(1)]*
 - C. Consequence of Material Violation of Act.** Any action taken by the school board or board of education or by its employees or agents in a material violation of the act shall be considered null, void, and of no effect. *[Ref. § 79-261(2)]*
 - D. When Notice is Effectively Given.** Any statement, notice, recommendation, determination, or similar action specified in the Student Discipline Act shall be effectively given at the time written evidence there-of is delivered personally to or upon receipt of certified or registered mail or upon actual knowledge by a student or his or her parent or guardian. *[Ref. § 79-260]*
 - E. Delegation of Authority.** The school board or board of education may authorize the delegation to other school officials of responsibilities directed to the principal or superintendent by the act. *[Ref. § 79-261(3)]*
 - F. School District Rules and Standards.**
 - 1. School Boards.** The school board or board of education shall establish and promulgate rules and standards concerning student conduct which are reasonably necessary to carry out or to prevent interference with carrying out any educational function, if such rules and standards are clear and definite so as to provide clear notice to the student and his or her parent or guardian as to the conduct prescribed, prohibited, or required under the rules and standards. Notwithstanding any other provisions contained in the Student Discipline Act, the school board or board of education may by rule specify a particular action as a sanction for particular conduct. Any such action must be otherwise authorized by section 79-258, 79-265, or 79-267. Any such rule shall be binding on all students, school officials, board members, and hearing examiners. Expulsion may be specified as a sanction for particular conduct only if the school board or board of education finds that the type of conduct for which expulsion is specified has the potential to seriously affect the health, safety, or welfare of the student, other students, staff members, or any other person or to otherwise seriously interfere with the educational process. *[Ref. § 79-262(1)]*
 - 2. School Officials.** All rules and standards established by school officials, other than the board, applicable to students shall not conflict with rules and standards adopted by the board. The board

may change any rule or standard in accordance with policies which it may from time to time adopt. [Ref. § 79-262(2)]

3. **Distributing and Posting.** Rules or standards which form the basis for discipline shall be distributed to each student and his or her parent or guardian at the beginning of each school year, or at the time of enrollment if during the school year, and shall be posted in conspicuous places in each school during the school year. Changes in rules and standards shall not take effect until reasonable effort has been made to distribute such changes to each student and his or her parent or guardian. [Ref. § 79-262(3)]

G. Authorized Actions by Administrators and Teachers. Administrative and teaching personnel may take actions regarding student behavior, other than those specifically provided in the Student Discipline Act, which are reasonably necessary to aid the student, further school purposes, or prevent interference with the educational process.

Such actions may include, *but need not be limited to*, counseling of students, parent conferences, rearrangement of schedules, requirements that a student remain in school after regular hours to do additional work, restriction of extracurricular activity, or requirements that a student receive counseling, psychological evaluation, or psychiatric evaluation upon the written consent of a parent or guardian to such counseling or evaluation. [Ref. § 79-258]

H. Compliance with Other State and Federal Laws. If a student is suspended, expelled, or excluded from school or from any educational function pursuant to the Student Discipline Act, such absence from school shall not be deemed a violation on the part of any person under any compulsory school attendance statutes. Any suspension or expulsion under the act shall comply with the requirements of the Special Education Act and the requirements of the federal Individuals with Disabilities Education Act, 20 U.S.C. 1401 et seq. [Ref. § 79-259]

IV. Emergency Exclusion.

A. Grounds. Any student may be excluded from school in the following circumstances:

1. **Disease.** If the student has a dangerous communicable disease transmissible through normal school contacts and poses an imminent threat to the health or safety of the school community. [Ref. § 79-264(1)(a)]
2. **Conduct.** If the student's conduct presents a clear threat to the physical safety of himself, herself, or others, or is so extremely disruptive as to make temporary removal necessary to preserve the rights of other students to pursue an education. [Ref. § 79-264(1)(b)]

B. Duration and Procedures.

1. **Generally.** Any emergency exclusion shall be based upon a clear factual situation warranting it and shall last not longer than is necessary to avoid the dangers described immediately above. [Ref. § 79-264(2)]
2. **Exclusion for Five Days or Less.** The same procedures for short-term suspension also apply to emergency exclusion if such exclusion is for five days or less. [Ref. § 79-264(1) & (3)]
3. **Exclusion Over Five Days.** If the superintendent or his/her designee determines that the exclusion will extend beyond five days, the following procedural provisions must be used: [Ref. § 79-264(3)]
 - a. **Hearing/Final Determination.** The school board must adopt a procedure for a hearing to be held and a final determination made within ten (10) school days after the initial date of exclusion. [Ref. § 79-264(3)]

- b. **Procedural Compliance.** The procedure adopted by the school board must substantially comply with the disciplinary actions which require due process [*i.e., long-term suspension, expulsion and reassignment*] and such provisions shall be modified only to the extent necessary to accomplish the hearing and determination within this shorter time period. [*Ref. § 79-264(3)*]

V. Short-term Suspension.

- A. **Definition.** “Short-term suspension” means the exclusion of a student from attendance in all schools within the system for a period not to exceed five school days. [*Ref. § 79-256(4)*]
- B. **Initiated by Principal.** The principal may deny any student the right to attend school or to take part in any school function for a period of up to five (5) school days. [*Ref. § 79-265(1)*]
- C. **Grounds for Short-term Suspension.**
 - (i) Conduct constituting grounds for expulsion as set out in the Student Discipline Act; or [*Ref. § 79-265(1)(a)*]
 - (ii) Any other violation of rules and standards of behavior adopted under sections the act. [*Ref. § 79-265(1)(b)*]
- D. **Investigation.** Short-term suspension shall be made only after the principal has made an investigation of the alleged conduct or violation and has determined that such suspension is necessary:
 - (i) to help any student;
 - (ii) to further school purposes; or
 - (iii) to prevent an interference with school purposes. [*Ref. § 79-265(2)*]
- E. **Notice of Charges.** Before such short-term suspension shall take effect, the student shall be given oral or written notice of:
 - (i) the charges against him or her;
 - (ii) an explanation of the evidence the authorities have; and
 - (iii) an opportunity to present his or her version. [*Ref. § 79-265(3)*]
- F. **Written Statement.** Within twenty-four (24) hours or such additional time as is reasonably necessary following such suspension, the principal shall send a written statement to the student and his or her parent/guardian describing:
 - (i) the student’s conduct, misconduct, or violation of the rule or standard, and
 - (ii) the reasons for the action taken. [*Ref. § 79-265(4)*]
- G. **Principal/Parent Conference.** The principal shall make a reasonable effort to hold a conference with the parent or guardian before or at the time the student returns to school. [*Ref. § 79-265(4)*]
- H. **Make-up School Work.** Any students receiving short-term suspension may be given an opportunity to complete any classwork, including, but not limited to, examinations, missed during the period of suspension. [*Ref. § 79-265(5)*]

1. Policy.

- (i) Districts must develop and adopt guidelines stating the criteria school officials will use in determining whether and to what extent such opportunity for completion will be granted to suspended students.
- (ii) The guidelines must be provided to the student and parent or guardian at the time of suspension. *[Ref. § 79-265(5)]*

VI. Long-term Suspension, Expulsion, Mandatory Reassignment.

A. Definitions.

1. **Long-term Suspension.** “Long-term suspension” means the exclusion of a student from attendance in all schools within the system for a period exceeding five school days but less than twenty school days. *[Ref. § 79-256(1)]*
2. **Expulsion.** “Expulsion” means exclusion from attendance in all schools within the system in accordance with section 79-283. *[Ref. § 79-256(2)]*
3. **Mandatory Reassignment.** “Mandatory reassignment” means the involuntary transfer of a student to another school in connection with any disciplinary action. *[Ref. § 79-256(3)]*

B. Grounds.

The following student conduct shall constitute grounds for long-term suspension, expulsion, or mandatory reassignment, subject to the procedural provisions of the Act, when such activity occurs:

- (i) on school grounds,
 - (ii) in a vehicle owned, leased, or contracted by a school being used for a school purpose or in a vehicle being driven for a school purpose by a school employee or by his or her designee,
 - (iii) or at a school-sponsored activity or athletic event. *[Ref. § 79-267]*
1. **Violence, Force, etc.** Use of violence, force, coercion, threat, intimidation, or similar conduct in a manner that constitutes a substantial interference with school purposes. *[Ref. § 79-267(1)]*
 2. **Damage or Theft of Property.** Willfully causing or attempting to cause substantial damage to property, stealing or attempting to steal property of substantial value, or repeated damage or theft involving property. *[Ref. § 79-267(2)]*
 3. **Causing Personal Injury.** Causing or attempting to cause personal injury to a school employee, to a school volunteer, or to any student. Personal injury caused by accident, self-defense, or other action undertaken on the reasonable belief that it was necessary to protect some other person shall not constitute a violation of this subdivision. *[Ref. § 79-267(3)]*
 4. **Extortion.** Threatening or intimidating any student for the purpose of or with the intent of obtaining money or anything of value from such student. *[Ref. § 79-267(4)]*
 5. **Weapons.** Knowingly possessing, handling, or transmitting any object or material that is ordinarily or generally considered a weapon. *[Ref. § 79-267(5)]*
 6. **Controlled Substances, Imitations, Alcohol.** Engaging in the unlawful possession, selling, dispensing, or use of a controlled substance or an imitation controlled substance, as defined in section 28-401, a substance represented to be a controlled substance, or alcoholic liquor as defined in section 53-103 or being under the influence of a controlled substance or alcoholic liquor. *[Ref. § 79-267(6)]*
 - (i) “Controlled substance” shall mean a drug, substance, or immediate precursor in Schedules I to V of section 28-405. Controlled substance shall not include distilled spirits, wine, malt beverages, tobacco,

or any non-narcotic substance if such substance may, under the Federal Food, Drug, and Cosmetic Act and the law of this state, be lawfully sold over the counter without a prescription. *[Ref. § 28-401(4)]*

- (ii) “Imitation controlled substance” shall mean a substance which is not a controlled substance but which, by way of express or implied representations and consideration of other relevant factors including those specified in section 28-445, would lead a reasonable person to believe the substance is a controlled substance. A placebo or registered investigational drug manufactured, distributed, possessed, or delivered in the ordinary course of practice or research by a health care professional shall not be deemed to be an imitation controlled substance. *[Ref. § 28-401(36)]*
- (iii) “Alcoholic liquor” shall include alcohol, spirits, wine, beer, and any liquid or solid, patented or not,

9. **Other Activities.** Engaging in any other activity forbidden by the laws of the State of Nebraska which activity constitutes a danger to other students or interferes with school purposes. *[Ref. § 79-267(9)]*
 10. **Violating Rules and Standards.** A repeated violation of any rules and standards validly established pursuant to section 79-262 *[see III. Authority of School Board and School Personnel]* if such violations constitute a substantial interference with school purposes. It is the intent of the Legislature that alternatives to suspension or expulsion be imposed against a student who is truant, tardy, or otherwise absent from required school activities. *[Ref. § 79-267(10)]*
- C. **General Procedures.** If a principal makes a decision to discipline a student by long-term suspension, expulsion, or mandatory reassignment, the following procedures shall be followed: *[Ref. § 79-268]*

1. **Written Charge and Summary of Evidence.**

- a. **File with Superintendent.** On the date of the decision, a written charge and a summary of the evidence supporting such charge shall be filed with the superintendent.
- b. **Send Written Notice.** The school shall, within two (2) school days of the decision, send written notice by registered or certified mail to the student and his or her parent or guardian informing them of the rights established under the Student Discipline Act. *[Ref. § 79-268(1)]*

2. **Written Notice.** Written notice must include the following:

- a. **Violation and Summary of Evidence.** The rule or standard of conduct allegedly violated and the acts of the student alleged to constitute a cause for long-term suspension, expulsion, or mandatory reassignment, including a summary of the evidence to be presented against the student. *[Ref. § 79-268(2)(a)]*
- b. **Recommended Penalty.** The penalty, if any, which the principal has recommended in the charge and any other penalty to which the student may be subject. *[Ref. § 79-268(2)(b)]*
- c. **Right to Hearing.** A statement that, before long-term suspension, expulsion, or mandatory reassignment for disciplinary purposes can be invoked, the student shall have a right to a hearing, upon request, on the specified charges. *[Ref. § 79-268(2)(c)]*
- d. **Hearing Procedures.** A description of the hearing procedures provided by the act, along with procedures for appealing any decision rendered at the hearing. *[Ref. § 79-268(2)(d)]*
- e. **Examine Evidence and Witnesses.** A statement that the principal, legal counsel for the school, the student, the student's parent, or the student's representative or guardian shall have the right to:
 - (i) examine the student's academic and disciplinary records and any affidavits to be used at the hearing concerning the alleged misconduct and
 - (ii) know the identity of the witnesses to appear at the hearing and the substance of their testimony. *[Ref. § 79-268(2)(e)]*
- f. **Request for Hearing Form.** A form on which the student, the student's parent, or the student's guardian may request a hearing to be signed by such parties and delivered to the principal or superintendent in person or by registered or certified mail as prescribed in Sections 79-271 and 79-272. *[Ref. § 79-268(2)(f)]*

3. Suspension until Hearing. When a notice of intent to discipline a student by long-term suspension, expulsion, or mandatory reassignment is filed with the superintendent, the student may be suspended by the principal until:

- (i) the date the disciplinary action takes effect if no hearing is requested;
- (ii) if a hearing is requested, the date the hearing examiner makes the report of his/her findings and a recommendation of the action to be taken to the superintendent, or
- (iii) if the principal determines that the student must be suspended immediately to prevent or substantially reduce the risk of:
 - (a) interference with an educational function or school purpose, or
 - (b) a personal injury to the student himself or herself, other students, school employees, or school volunteers. [Ref. §79-268(3)]

4. Discussions Prior to Hearing. Nothing in the Student Discipline Act shall preclude the student, parent, guardian, or representative from discussing and settling the matter with appropriate school personnel prior to the hearing stage. [Ref. § 79-268(3)]

D. Procedures if Hearing is not Requested. If a hearing is not requested by the student or the student's parent or guardian within five (5) school days following receipt of the written notice, the punishment recommended in the charge by the principal or his/her designee will automatically go into effect upon the fifth (5th) school day following receipt of the written notice by the student or his/her parent or guardian as required above under Section 79-268. [Ref. § 79-271]

E. Procedures if a Hearing is Requested.

1. Request for Hearing. A hearing must be requested within five (5) school days after receipt of the written notice. [Ref. § 79-269(1)]

a. Request for Hearing Beyond Five Days. If a hearing is requested more than five (5) school days but not more than thirty (30) calendar days following the actual receipt of written notice, the hearing shall be held but the imposed punishment shall continue in effect pending final determination. [Ref. § 79-272]

2. Appointment/Qualifications of Hearing Examiner. If a hearing is requested, the superintendent must appoint a hearing examiner. [Ref. § 79-269(1)]

a. Qualifications. The hearing examiner can be any person designated by the school district's superintendent, school board, or counsel, if such person:

- (i) has not brought the charges against the student,
- (ii) is not a witness at the hearing, and
- (iii) has no involvement in the charge. [Ref. § 79-269(2)]

b. General Duties.

- (i) *Impartiality* - In addition to other duties, it is the duty of the hearing examiner to remain impartial throughout all deliberations.
- (ii) *Availability* - The hearing examiner must be available, prior to any hearing held pursuant to the act, to answer any questions the principal, the student, or the student's parent or guardian may have regarding the nature and conduct of the hearing. [Ref. § 79-270]

3. **Notice of Time/Place for Hearing.** Within two (2) school days after being appointed, the hearing examiner must give written notice to the principal, the student, and the student's parent or guardian of the time and place for the hearing. *[Ref. § 79-269(1)]*
 - (i) The hearing shall be scheduled within a period of five (5) school days after it is requested, but such time may be changed by the hearing examiner for good cause. *[Ref. § 79-269(3)]*
 - (ii) No hearing shall be held upon less than two (2) school days' actual notice to the principal, the student, and the student's parent or guardian, except with the consent of all the parties. *[Ref. § 79-269(3)]*
4. **Right to Examine Records/Statements.** The principal or legal counsel for the school, the student, and the student's parent or guardian, or representative shall have the right to examine the records and written statements referred to in the Student Discipline Act and the statement of any witness in the possession of the school board at a reasonable time prior to the hearing. *[Ref. § 79-269(4)]*

F. Hearing Procedures.

1. Required Attendance at Hearing.

- (i) hearing examiner,
- (ii) student,
- (iii) student's parent or guardian,
- (iv) student's representative (who may be an attorney), if any, and
- (v) legal counsel for the school board, if the hearing examiner or the superintendent deems it advisable. *[Ref. § 79-273]*

2. Legal Counsel for School Board.

- a. **Capacity.** The school board, acting through the superintendent, may request legal counsel to be present either:
 - (i) for the purpose of acting as the designee of the principal or
 - (ii) for the purpose of advising the hearing examiner in the conduct of the hearing. *[Ref. § 79-274]*
- b. **Designee of the Principal.** Any legal counsel who acts as the designee of the principal in presenting the school's case against the student shall not:
 - (i) advise the hearing examiner on the conduct of the hearing -or-
 - (ii) later advise administrators or school board members on the conduct of any appeal. *[Ref. § 79-274]*
- c. **Advising Hearing Examiner.** Legal counsel may give advice on technical and procedural aspects of the school's presentation and may advise the hearing examiner and the school board so long as the legal counsel does not act as the principal's designee in presenting the school's case. *[Ref. § 79-274]*

3. Witnesses.

- a. **When Present.** Witnesses shall be present only when they are giving information at the hearing. *[Ref. § 79-274]*

- b. **Witness Testimony.** The student, the student’s parent, guardian, or representative, the principal, or the hearing examiner may ask witnesses to testify at the hearing. [Ref. § 79-278(1)]
 - c. **Oath.** Such testimony shall be under oath, and the hearing examiner shall be authorized to administer the oath. [Ref. § 79-278(1)]
 - d. **Attendance of Witnesses.** The hearing examiner shall make reasonable effort to assist the student or the student’s parent, guardian, or representative in obtaining the attendance of witnesses. [Ref. § 79-278(1)]
 - e. **Cross-examination.** The student, the student’s parent, guardian, or representative, the principal, or the hearing examiner shall have the right to question any witness giving information at the hearing. [Ref. § 79-278(2)]
 - f. **Immunity.** Any person giving evidence by written statement or in person at a hearing shall be given the same immunity from liability as a person testifying in a court case. [Ref. § 79-279]
4. **Student Testimony.** The student may speak in his/her own defense and may be questioned on his or her testimony but he or she may choose not to testify and, in such case, shall not be threatened with punishment nor be later punished for refusal to testify. [Ref. § 79-275]
5. **Individuals may be Excluded from Hearing.**
- a. **Student.** The student may be excluded in the discretion of the hearing examiner at times when the student’s psychological evaluation or emotional problems are being discussed.
 - b. **Any otherperson.** The hearing examiner may exclude anyone from the hearing when his or her actions substantially disrupt an orderly hearing. [Ref. § 79-273]
6. **Evidence on Student’s Conduct and Records.** [Ref. § 79-276]
- a. **Statements about Conduct and Records.** The principal shall present to the hearing examiner statements, in affidavit form, of any person having information about the student’s conduct and the student’s records but not unless such statements and records have been made available to the student or the student’s parent, guardian, or representative prior to the hearing.
 - b. **Explanation of Records.** The information contained in such records shall be explained and interpreted, prior to or at the hearing, to the student, parent or guardian, or representative, upon request, by appropriate school personnel.
7. **Rules of Evidence.** In conducting, the hearing examiner shall not be bound by the rules of evidence or any other courtroom procedure. [Ref. § 79-277]
8. **Recorded at District’s Expense.** The proceedings of the hearing shall be recorded at the expense of the school district. [Ref. § 79-280]
9. **Joint Hearings.**
- a. **When Conducted.** A joint hearing may be conducted when:
 - (i) more than one student is charged with violating the same rule and acted in concert, and
 - (ii) the facts are substantially the same for all such students. [Ref. § 79-281(1)]

- b. **Discretion of Hearing Examiner.** A joint hearing may be conducted if the hearing examiner believes that:
 - (i) a joint hearing is not likely to result in confusion and
 - (ii) no student shall have his or her interests substantially prejudiced by a single hearing. *[Ref. § 79-281(1)]*
- c. **Order for Separate Hearing.** If during the conduct of the hearing the hearing examiner finds that a student's interests will be substantially prejudiced by a joint hearing or that the hearing is resulting in confusion, the hearing examiner may order a separate hearing for any student. *[Ref. § 79-281(2)]*

G. Post Hearing Report. After the hearing, a report shall be made by the hearing examiner.

1. Contents of Report.

- (i) The hearing examiner's findings;
- (ii) A recommendation of the action to be taken; and
- (iii) The reasons for the particular action recommended in terms of the needs of both the student and the school board. *[Ref. § 79-282(1)]*

2. Range of Recommendations. The recommendation by the hearing examiner may range from no action, through the entire field of counseling, to long-term suspension, expulsion, mandatory reassignment, or an alternative educational placement under section 79-266. *[Ref. § 79-282(1)]*

3. Review by Superintendent. A review shall be made of the hearing examiner's report by the superintendent, who may change, revoke, or impose the sanction recommended by the hearing examiner but shall not impose a sanction more severe than that recommended by the hearing examiner. *[Ref. § 79-282(2)]*

4. All Decisions Based on Evidence. The findings and recommendations of the hearing examiner, the determination by the superintendent, and any determination on appeal to the governing body, shall be made solely on the basis of the evidence presented at the hearing or, in addition, on any evidence presented on appeal. *[Ref. § 79-282(3)]*

H. Final Disposition.

1. Written Notice. Written notice of the findings and recommendations of the hearing examiner and the determination of the superintendent shall be made by certified or registered mail or by personal delivery to the student or the student's parent or guardian. *[Ref. § 79-283(1)]*

2. Immediate Effect upon Receipt. Upon receipt of such written notice by the student, parent, or guardian, the determination of the superintendent shall take immediate effect. *[Ref. § 79-283(1)]*

I. Duration of Expulsion. The maximum duration of an expulsion is determined by the nature of the offense.

1. Firearm Offense. The expulsion of a student for the knowing and intentional possession, use, or transmission of a firearm, as defined in 18 U.S.C. 921, shall be for a period as provided by the school district policy adopted pursuant to section 79-263 [see below]. *[Ref. § 79-283(4)]*

a. Exceptions: The firearm offense shall not apply to:

- (i) the issuance of firearms to or possession of firearms by members of the Reserve Officers Training Corps when training or
- (ii) firearms which may lawfully be possessed by the person receiving instruction under the immediate supervision of an adult instructor who may lawfully possess firearms. *[Ref. § 79-283(4)]*

b. Policy.

- (i) **Calendar Year.** Each school district shall adopt a policy requiring the expulsion from school for a period of not less than one *[calendar]* year of any student who is determined to have knowingly and intentionally possessed, used, or transmitted a firearm:
 - (a) on school grounds,
 - (b) in a vehicle owned, leased, or contracted by a school being used for a school purpose or in a vehicle being driven for a school purpose by a school employee or his or her designee, or
 - (c) at a school-sponsored activity or athletic event. *[Ref. § 79-263(1)]*
- (ii) **Firearm Definition.** For the purpose of this offense, the federal definition of “firearm,” as provided in 18 U.S.C. 921, will apply. *[Ref. § 79-263(1)]*
- (iii) **Modification.** The policy shall authorize the superintendent or the school board or board of education to modify the expulsion requirement on an individual basis. *[Ref. § 79-263(1)]*

c. Report to NDE. Each school district shall provide annually to the Nebraska Department of Education:

- (i) An assurance that the school district has in effect the above required policy; and
- (ii) A description of the circumstances surrounding any expulsions imposed under the policy required by subsection (1) of this section, including:
 - (a) The name of the school concerned;
 - (b) The number of students expelled from the school; and
 - (c) The types of weapons concerned. *[Ref. § 79-263(2)]*

2. Use of Force/Personal Injury Offenses. *[Ref. § 79-283(3)]*

a. Offense Defined.

- (i) The knowing and intentional use of force in causing or attempting to cause personal injury to a school employee, school volunteer, or student except in cases of self-defense as outlined in 79-267(3); or
- (ii) the knowing and intentional possession, use, or transmission of a dangerous weapon, other than a firearm. *[Ref. § 79-383(3)]*

b. Self-defense Exception. Personal injury caused by accident, self-defense, or other action undertaken on the reasonable belief that it was necessary to protect some other person. *[Ref. § 79-267(3)]*

c. Sanction. The duration of the expulsion for the offense outlined above shall be:

- (i) **Offense in First Semester.** If the misconduct occurs during the first semester, then the expulsion will last for a period not to exceed the remainder of the school year in which it took effect.
- (ii) **Offense in Second Semester.** If the expulsion takes place during the second semester, the expulsion shall remain in effect for summer school and may remain in effect for the first semester of the following school year. *[Ref. § 79-283(3)]*

- d. **Modification.** Such action may be modified or terminated by the school district at any time during the expulsion period. *[Ref. § 79-283(3)]*

3. All Other Expulsions.

- a. **Duration of Expulsion.** Except for the expulsion offenses listed above, the expulsion of a student shall be for a period not to exceed the remainder of the semester in which it took effect unless the misconduct occurred:

- (i) within ten school days prior to the end of the first semester, in which case the expulsion shall remain in effect through the second semester, or

- (ii) within ten school days prior to the end of the second semester, in which case the expulsion shall remain in effect for summer school and the first semester of the following school year subject to the provisions of subsection (5) of this section. *[Ref. § 79-283(2)]*

- b. **Modification.** Such action may be modified or terminated by the school district at any time during the expulsion period. *[Ref. § 79-283(2)]*

J. Automatic Review. Any expulsion that will remain in effect during the first semester of the following school year shall be automatically scheduled for review before the beginning of the school year.

- 1. **Conducted by Hearing Examiner.** The review shall be conducted by the hearing examiner after the hearing examiner has given notice of the review to the student and the student's parent or guardian.
- 2. **Limited Review.** This review shall be limited to newly discovered evidence or evidence of changes in the student's circumstances occurring since the original hearing.
- 3. **Determination.** This review may lead to a recommendation by the hearing examiner that the student be readmitted for the upcoming school year. If the school board or board of education or a committee of such board took the final action to expel the student, the student may be readmitted only by action of the board. Otherwise the student may be readmitted by action of the superintendent. *[Ref. § 79-283(5)]*

K. Suspension of Enforcement of Expulsion. A school district that has expelled a student may suspend the enforcement of such expulsion unless the expulsion was required by section 79-283(4) [i.e., firearm offense]. The suspension may be for a period not to exceed the length of the expulsion. *[Ref. § 79-266(3)]*

- 1. **Condition.** As a condition of such suspended action, the school district may require participation in a plan pursuant to 79-266(2) or assign the student to a school, class, or educational program which the school district deems appropriate. *[Ref. § 79-266(3)]*

- 2. **Conclusion of Suspension Period.** At the conclusion of such suspension period, the school district shall:

- (i) reinstate any student who has satisfactorily participated in a plan pursuant to 79-266(2) or the school, class, or educational program to which such student has been assigned and permit the student to return to the school of former attendance or to attend other programs offered by the district; or

- (ii) if the student's conduct has been unsatisfactory, enforce the remainder of the expulsion action. *[Ref. § 79-266(3)]*

- 3. **Expungement of Record.** If the student is reinstated, the district may also take action to expunge the record of the expulsion action. *[Ref. § 79-266(3)]*

L. Alternative Education/Pre-expulsion Procedure.

1. District Choice. Each school district shall offer all expelled students either:

- (i) an alternative school, class, or educational program, or
- (ii) the pre-expulsion procedures outlined below. *[Ref. § 79-266(1)]*

2. Alternative Education.

a. Cooperative Agreements. Any two or more school boards or boards of education may join together in providing alternative schools, classes, or educational programs. Any district may by agreement with another district send its suspended or expelled students to any alternative school, class, or educational program already in operation by such other district. *[Ref. § 79-266(1)]*

b. Possible Programs. An educational program may include, but shall not be limited to:

- (i) individually prescribed educational and counseling programs,
- (ii) a community-centered classroom with experiences for the student,
- (iii) an observer or aide in governmental functions,
- (iv) an on-the-job trainee,
- (v) a participant in specialized tutorial experiences. *[Ref. § 79-266(1)]*

c. Individualized Learning Programs. All alternative educational programs shall include an individualized learning program to enable the student to continue academic work for credit toward graduation. *[Ref. § 79-266(1)]*

d. Rules and Regulations. The State Department of Education shall adopt and promulgate rules and regulations relating to alternative schools, classes, and educational programs. *[Ref. § 79-266(1)]*

3. Pre-expulsion Procedure. If a district does not provide an alternative educational program for expelled students, the district shall adhere to the following procedures prior to expelling a student unless the expulsion was required by section 79-283(4) [i.e., firearm offense]. *[Ref. § 79-266(2)]*

a. Plan Development. A conference shall be called by a school administrator and held to assist the district in the development of a plan with the participation of:

- (i) a parent or legal guardian,
- (ii) the student,
- (iii) a school representative, and
- (iv) a representative of either a community organization with a mission of assisting young people or a representative of an agency involved with juvenile justice. *[Ref. § 79-266(2)]*

b. Adoption of Plan. The plan shall be in writing and adopted by a school administrator and presented to the student and the parent or legal guardian. *[Ref. § 79-266(2)]*

c. Contents of Plan. The plan shall:

- (i) specify guidelines and consequences for behaviors which have been identified as preventing the student from achieving the desired benefits from the educational opportunities provided,
- (ii) identify educational objectives that must be achieved in order to receive credits toward graduation,
- (iii) specify the financial resources and community programs available to meet both the educational and behavioral objectives identified, and
- (iv) require the student to attend monthly reviews in order to assess the student's progress toward meeting the specified goals and objectives. *[Ref. § 79-266(2)]*

M. Appeal.

1. Case Record.

a. Contents of Record. The record in a case under the Student Discipline Act shall consist of:

- (i) the charge,
- (ii) the notice,
- (iii) the evidence presented,
- (iv) the hearing examiner's findings and recommendations, and
- (v) the action of the superintendent. *[Ref. § 79-284]*

b. Record for Appeal. With respect to any appeal to a court or any subsequent appeal, the record shall consist, in addition to the above items, of any additional evidence taken and any additional action taken in the case. *[Ref. § 79-284]*

2. Request for Appeal. The student or the student's parent or guardian may, within seven (7) school days following receipt of the superintendent's written notice of the determination appeal the determination to the school board by a written request which shall be filed with the secretary of the board or with the superintendent. *[Ref. § 79-285(1)]*

3. Appeal Hearing.

a. When. A hearing shall be held before the school board within a period of ten (10) school days after it is requested, and such time for a hearing may be changed by mutual agreement of the student and superintendent. *[Ref. § 79-285(2)]*

b. Deliberating Body. The hearing may be held before a committee of the school board of not less than three (3) members. *[Ref. § 79-285(2)]*

c. Admissible Evidence. Such appeal shall be made on the record, except that new evidence may be admitted to avoid a substantial threat of unfairness and such new evidence shall be recorded at the expense of the district. *[Ref. § 79-285(2)]*

d. Deliberation. After examining the record and taking new evidence, if any, the school board or designated committee may withdraw to deliberate privately upon such record and new evidence. *[Ref. § 79-286(1)]*

(i) **Limitations.** Any such deliberation shall be held in the presence only of board members in attendance at the appeal proceeding but may be held in the presence of legal counsel who has not previously acted as the designee of the principal in presenting the school's case before the hearing examiner. *[Ref. § 79-286(1)]*

(ii) **Questions during Deliberation.** If any questions arise during such deliberations which require additional evidence, the deliberating body may reopen the hearing to receive such evidence, subject to the right of all parties to be present. *[Ref. § 79-286(2)]*

e. **Action on Appeal.** The deliberating body may alter the superintendent's disposition of the case if it finds the decision to be too severe but may not impose a more severe sanction. *[Ref. § 79-286(3)]*

f. **Dispatch of Final Action.** The final action of the deliberating body shall be evidenced by personally delivering or mailing by certified mail a copy of the deliberating body's decision to the student and his or her parent or guardian. *[Ref. § 79-287]*

N. **Judicial Review.** Any person aggrieved by a final decision in a contested case under this Act, whether such decision is affirmative or negative in form, shall be entitled to judicial review. Nothing in the Act shall be deemed to prevent resort to other means of review, redress, or relief provided by law. *[Ref. § 79-288]*

1. Procedure.

a. **Petition to District Court.** Proceedings for judicial review shall be instituted by filing a petition in the district court of the county where the action is taken within thirty (30) days after the service of the final decision by the school board. *[Ref. § 79-289(1)]*

b. **Parties of Record.** All parties of record shall be made parties to the proceedings for review. The court, in its discretion, may permit other interested persons to intervene. *[Ref. § 79-289(2)]*

c. **Service of Summons.** Summons shall be served as in other actions, except that a copy of the petition shall be served upon the board together with the summons. Service of summons upon a duly elected officer of the board or the appointed secretary of the board shall constitute service on the board. *[Ref. § 79-289(3)]*

d. **Stay of Enforcement.**

(i) **When.**

- c. **No Responsive Pleading.** The school board need not file any responsive pleading. *[Ref. § 79-290]*
- 3. **Review Without Jury.** The judicial review shall be conducted by the court without a jury on the record. *[Ref. § 79-291(1)]*
- 4. **Options of Court.** The court may:
 - (i) affirm the decision of the school board,
 - (ii) remand the case for further proceedings, or
 - (iii) reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the board's decision is: *[Ref. § 79-291(2)]*
 - (a) In violation of constitutional provisions; *[Ref. § 79-291(2)(a)]*
 - (b) In excess of the statutory authority or jurisdiction of the board; *[Ref. § 79-291(2)(b)]*
 - (c) Made upon unlawful procedure; *[Ref. § 79-291(2)(c)]*
 - (d) Affected by other error of law; *[Ref. § 79-291(2)(d)]*
 - (e) Unsupported by competent, material, and substantial evidence in view of the entire record as made on review; or *[Ref. § 79-291(2)(e)]*
 - (f) Arbitrary or capricious. *[Ref. § 79-291(2)(f)]*

VII. Duty to Report Criminal Violations.

- A. **Notify Law Enforcement Authorities.** The school principal or the principal's designee shall notify as soon as possible the appropriate law enforcement authorities of the county or city in which the school is located of any act of the student described in section 79-267 (grounds for disciplinary action) which the principal or designee knows or suspects is a violation of the Nebraska Criminal Code. *[Ref. § 79-293(1)]*
- B. **Immunity.** The principal or designee, or any other school employee reporting an alleged violation of the Nebraska Criminal Code shall not be civilly or criminally liable as a result of any report authorized by this section unless: *[Ref. § 79-293(2)]*
 - (i) such report was false and the person making such report knew or should have known it was false or *[Ref. § 79-293(2)(aon)*

- (i) the minor is in custody and
- (ii) the place where he or she is being held, except:

1. **Endangerment by Disclosure.** If the peace officer has a reasonable belief that the minor would be endangered by a disclosure of the place where the minor is being held or that the disclosure would cause the custody of the minor to be disturbed, the peace officer may refuse to disclose the place where the minor is being held for a period not to exceed twenty-four (24) hours.
2. **Medical Treatment.** The peace officer shall, inform the parent, guardian, or responsible relative whether the child requires and is receiving medical or other treatment.
3. **Court Review.** The Juvenile court shall review any decision not to disclose the place where the minor is being held at any subsequent detention hearing. *[Ref. § 79-294]*

C. Peace Officer Defined. “Peace officer” shall include sheriffs, coroners, jailers, marshals, police officers, state highway patrol officers, members of the National Guard on active service by direction of the Governor during periods of emergency, and all other persons with similar authority to make arrests. [ref. § 49-801(15)]

APPENDIX

Federal Definition of “Firearm” 18 U.S.C. Section 921

(3) The term, “firearm” means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

(4) The term “destructive device” means-

(A) any explosive, incendiary, or poison gas-

- (i) bomb,
- (ii) grenade,
- (iii) rocket having a propellant charge of more than four ounces,
- (iv) missile having a explosive or incendiary charge of more than one-quarter ounce,
- (v) mine, or
- (vi) device similar to any of the devices described in the preceding clauses;

(B) any type of weapon (other than a shotgun or a shotgun shell which the Secretary finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and

(C) any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraph (A) or (B) and from which a destructive device may be readily assembled.

The term “destructive device” shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684 (2), 4685, or 4686 of title 10; or any other device which the Secretary of the Treasury finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting, recreational or cultural purposes.