

- i. When charges are denied, an explanation of the evidence forming the basis of the charges also shall be provided;
2. An informal hearing prior to the suspension in which the student is given the opportunity to present the student's version of events regarding the student's actions leading to the short-term suspension and provided notice of the school district's actions taken pursuant to N.J.A.C. 6A:16-7.1(c)2 and 5:
 - i. The informal hearing shall be conducted by a school administrator or his or her designee;
 - ii. To the extent that a student's presence poses a continuing danger to persons or property or an ongoing threat of disrupting the educational process, the student may be immediately removed from the student's educational program and the informal hearing shall be held as soon as practical after the suspension;
 - iii. The informal hearing should take place even when a school staff member has witnessed the conduct forming the basis of the charge; and
 - iv. The informal hearing and the notice given may take place at the same time;
3. Oral or written notification to the student's parents of the student's removal from the student's educational program prior to the end of the school day on which the school administrator makes the decision to suspend the student, which shall include an explanation of:
 - i. The specific charges;
 - ii. The facts on which the charges are based;
 - iii. The provision(s) of the code of student conduct the student is accused of violating;
 - iv. The student's due process rights, pursuant to N.J.A.C. 6A:16-7.1(c)3, and 7.2 through 7.6; and
 - v. The terms and conditions of the suspension.
4. Appropriate supervision of the student while waiting for the student's parent to remove the student from school during the school day; and
5. Academic instruction either in school or out of school that addresses the Core Curriculum Content Standards, pursuant to N.J.A.C. 6A:8-3.1, which may include a public education program provided in accordance with the provisions of N.J.A.C. 6A:16-9 or 10.
 - i. The instruction shall be provided within five school days of the suspension.
 - ii. Educational services provided to a student with a disability shall be provided consistent with the student's Individualized Education Program in accordance with N.J.A.C. 6A:14.

iii. At the completion of a short-term suspension, the district board of education shall return the general education student to the general education program.

(b) The suspending principal shall immediately report the suspension to the chief school administrator, who is required to report it to the district board of education at its next regular meeting, pursuant to N.J.S.A. 18A:37-4.

(c) For a student with a disability, the provisions set forth in this section shall be provided in addition to all procedural protections set forth in N.J.A.C. 6A:14.

Amended by R.2006 d.366, effective October 16, 2006.

See: 38 N.J.R. 2294(a), 38 N.J.R. 4411(c).

Rewrote (a).

Amended by R.2007 d.184, effective June 4, 2007.

See: 39 N.J.R. 294(a), 39 N.J.R. 2243(a).

In (a)3iv, updated the N.J.A.C. references; in (a)5i, substituted "The instruction" for "Services"; deleted former (c); and recodified former (d) as (c).

Case Notes

Initial Decision (2008 N.J. AGEN LEXIS 67) adopted, which concluded that regulations providing for an informal hearing to give students the opportunity to present their version of events regarding the actions leading to the short-term suspension were satisfied where ninth-grade students were given oral notice of allegations of plagiarism in computer assisted drafting class and were afforded an opportunity to explain their side of the story when they made their admission of improper copying of other students' drawings. T.B.M. ex rel. M.M. v. Moorestown Bd. of Educ., OAL Dkt. Nos. EDU 2780-07 and EDU 2782-07 (CONSOLIDATED), Commissioner's Decision (April 7, 2008).

Contrary to petitioner's contention that he should have been afforded a hearing before the board of education, his 10-day suspension for possession of a weapon on school property was a short-term penalty under N.J.A.C. 6A:16-7.2 and petitioner had received the informal hearing required by that rule; in contrast, N.J.A.C. 6A:16-5.5 through N.J.A.C. 6A:16-5.7, relied on by petitioner, are offenses that carry serious penalties, including expulsion and suspensions up to a year or more. R.O. ex rel. R.O. v. Bd. of Educ. of W. Windsor-Plainsboro School Dist., OAL Dkt. No. EDU 2010-05, 2006 N.J. AGEN LEXIS 275, Commissioner's Decision (March 17, 2006).

6A:16-7.3 Long-term suspensions

(a) In each instance of a long-term suspension, the district board of education shall assure the rights of a student suspended for more than 10 consecutive school days by providing the following:

1. Immediate notification to the student of the charges, prior to the student's removal from school;
2. An informal hearing prior to the suspension in which the student is given the opportunity to present the student's version of events regarding the student's actions leading to the long-term suspension and the school district's actions taken pursuant to N.J.A.C. 6A:16-7.1(c)2 and 5;
3. Immediate notification to the student's parents of the student's removal from school;

4. Appropriate supervision of the student while waiting for the student's parents to remove the student from school during the school day;

5. Written notification to the parents by the chief school administrator or his or her designee within two school days of the initiation of the suspension, stating:

- i. The specific charges;
- ii. The facts on which the charges are based;
- iii. The student's due process rights, pursuant to N.J.A.C. 6A:16-7.3 through 7.6; and
- iv. That further engagement by the student in conduct warranting expulsion, pursuant to N.J.S.A. 18A:37-2, shall amount to a knowing and voluntary waiver of the student's right to a free public education, in the event that a decision to expel the student is made by the district board of education, pursuant to N.J.S.A. 18A:37-2 and N.J.A.C. 6A:16-7.5.

(1) The district board of education shall request written acknowledgement of the notification of the provisions of (a)4iv above from the parents and the student subsequent to the removal from the student's educational program, pursuant to this section;

6. A list of witnesses and their statements or affidavits, if any, no later than five days prior to the formal hearing, pursuant to (a)10 below;

7. A student with a disability, a manifestation determination, pursuant to N.J.A.C. 6A:14-2.8 and the Federal regulations incorporated by reference therein;

8. Information on the right of the student to secure an attorney and legal resources available in the community identified pursuant to N.J.A.C. 6A:16-7.1(c)8;

9. Educational services, either in school or out of school, that are comparable to those provided in the public schools for students of similar grades and attainments, pursuant to N.J.S.A. 18A:38-25, which may include a public education program provided in accordance with the provisions of N.J.A.C. 6A:16-9 or 10.

i. The services shall be provided within five school days of the suspension.

ii. The district board of education shall make decisions regarding the appropriate educational program and support services for the suspended general education student, at a minimum, based on the following criteria:

(1) A behavioral assessment or evaluation including, but not limited to, a referral to the child study team, as appropriate;

(2) The results of any relevant testing, assessments or evaluations of the student;

(3) The student's academic, health and behavioral records;

(4) The recommendation of the chief school administrator, principal or other relevant school or community resource;

(5) Considerations of parental input; or

(6) Consultation with the Intervention and Referral Services team, in accordance with N.J.A.C. 6A:16-8, as appropriate.

iii. Educational services provided to a student with a disability shall be provided consistent with the student's Individualized Education Program, in accordance with N.J.A.C. 6A:14.

10. A formal hearing before the district board of education, which, at a minimum, shall:

i. Be conducted by the district board of education or delegated by the board to a board committee, a school administrator or an impartial hearing officer for the purpose of determining facts or making recommendations.

(1) The district board of education as a whole shall receive and consider either a transcript or detailed report on such hearing before taking final action;

ii. Include the opportunity for the student to:

(1) Confront and cross-examine witnesses, when there is a question of fact; and

(2) Present his or her own defense and produce oral testimony or written supporting affidavits.

iii. Take place no later than 30 calendar days following the day the student is suspended from the general education program; and

iv. Result in a decision by the district board of education, which at a minimum, shall be based on the preponderance of competent and credible evidence;

11. A written statement to the student's parents of the district board of education's decision within five school days after the close of the hearing that includes, at a minimum:

i. The charges considered;

ii. A summary of the documentary or testimonial evidence from both the student and the administration that was brought before the district board of education at the hearing;

iii. Factual findings relative to each charge and the district board of education's determination of each charge;

iv. Identification of the educational services to be provided to the student, pursuant to (a)9 above;

v. The terms and conditions of the suspension; and

vi. The right to appeal the district board of education's decision regarding the student's general education program to the Commissioner of Education in accordance with N.J.S.A. 18A:37-2.4 and N.J.A.C. 6A:3-1.3 through 1.17;

12. Immediate return to the general education program if at any time it is found that the general education student did not commit the offense;

13. For a student with a disability found not to have committed the offense, the student's program shall be determined in accordance with the provisions of N.J.A.C. 6A:14; and

14. At the completion of a long-term suspension, the district board of education shall return the general education student to the general education program.

(b) Any appeal of the district board of education's decision regarding the general education student's program shall be made to the Commissioner of Education, in accordance with N.J.S.A. 18A:37-2.4 and N.J.A.C. 6A:3-1.3 through 1.17.

(c) Suspension of general education students shall not be continued beyond the district board of education's second regular meeting following the suspension, unless the district board of education so determines, pursuant to N.J.S.A. 18A:37-5.

1. The district board of education shall determine whether to continue the suspension, pursuant to (a) above, based on the following criteria:

- i. The nature and severity of the offense;
- ii. The district board of education removal decision;