

**REGULATIONS  
DISCIPLINE AND DUE PROCESS IN SAFE SCHOOL ZONES**

**NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES**

**Part Ed 317 Standards And Procedures For Suspension And Expulsion Of Pupils Including Procedures Assuring Due Process**

**Ed. 317.01 Purpose.**

- (a) These rules provide the minimum requirements to assure due process and statewide uniformity in the enforcement of RSA 193:13 and 193-D relative to disciplinary action for gross misconduct, or for neglect or refusal to conform to the reasonable rules of the school, or for possession of a pellet or BB gun or rifle or possessing a firearm or other dangerous weapon by a pupil in a safe school zone.
- (b) These rules also provide a standard that local school boards shall use in adopting and implementing a policy relative to pupil conduct and disciplinary procedures under RSA 193-D:2, II.
- (c) These rules also link discipline and due process to the requirements of Ed 1109 relative to special needs students.

Source. #6109, eff 10-28-95; ss by #6366, eff 10-30-96; ss by #6820, eff 9-1-98

**Ed 317.02 Definitions.**

- (a) “Expulsion” means the permanent denial of a pupil’s attendance at school for any of the reasons listed in RSA 193:13, II and III.
- (b) “Firearm or other dangerous weapon” means “firearm or dangerous weapon” as defined in section 921 of Title 18 of the US Code, and any weapon prohibited by RSA 159, including but not limited to dangerous weapons listed in RSA 159:16.
- (c) “Gross misconduct” means an act which:
  - (1) Results in violence to another’s person or property;
  - (2) Poses a direct threat to the safety of others in a safe school zone; or
  - (3) Is identified in RSA 193-D:1,I.
- (d) “Neglect”, in the context of RSA 193:13, I and II means the failure of a pupil to pay attention to an announced, posted, or printed school rule.
- (e) “Pupil” means a child through age 21 in attendance at a school during the school day.
- (f) “Refusal”, in the context of RSA 193:13, I and II means the willful defiance of a pupil to comply

with an announced, posted, or printed school rule.

(g) “Safe school zone” means “safe school zone” as defined in RSA 193-D:1, II.

(h) “School day” means:

(1) For a pupil who takes the school bus, the time period beginning when a pupil boards the bus in the morning to the time when a pupil disembarks from the bus in the afternoon; and

(2) For a pupil who walks to school or arrives by private car, the time period beginning when the pupil arrives on the school grounds to the time when the pupil leaves the school grounds.

(i) “Superintendent” means the school superintendent or chief administering officer, or a representative designated in writing as authorized under RSA 193:13, I.

(j) “Suspension” means the temporary denial of a student’s attendance at school for a specific period of time for gross misconduct or for neglect or refusal to conform to announced, posted, or printed school rules.

Source. #6109, eff 10-28-95; ss by #6366, eff 10-30-96

**Ed 317.03 Standard for Expulsion by Local School Board.**

(a) A school board which expels a pupil under RSA 193:13, II or III, shall state in writing its reasons and shall provide a procedure for review as allowed under RSA 193:13, II.

(b) School boards shall make certain that the pupil has received notice of the requirements of RSA 193-D:1 and RSA 193:13 through announced, posted, or printed school rules.

(c) School boards shall comply with paragraph (a) by specifically naming:

(1) The act leading to expulsion; and

(2) The specific statutory reference prohibiting that act as listed in RSA 193-D:1, I.

(d) If a student is subject to expulsion and a firearm is involved, the responsibility shall be upon the superintendent to contact local law enforcement officials whenever there is any doubt concerning:

(1) Whether a firearm is legally licensed under RSA 159; or

(2) Whether the firearm is lawfully possessed, as opposed to unlawfully possessed, under the legal definitions of RSA 159.

(e) If a pupil brings or possesses a firearm in a safe school zone without written authorization from the superintendent, the following shall apply:

(1) The superintendent shall suspend the pupil for a period not to exceed 10 days, pending a hearing by the local board; and

(2) The school board shall hold a hearing within 10 days to determine that:

a. The student was in violation of RSA 193:13, III and therefore is subject to expulsion.

(f) A pupil may assert any of the protections provided in Ed 1128 if a pupil who has been identified as disabled under Chapter Ed 1100, or who has not been determined to be eligible for special education and related services has:

(1) Engaged in behavior that violated any rule or code of conduct of the school or local school board including:

a. Carrying a weapon to school or to a school function under the jurisdiction of a State or a local school board;

b. Knowingly possessing or using illegal drugs; or

c. Selling or soliciting the sale of a controlled substance while at school or a school function under the jurisdiction of a State or local school board;

(g) A pupil may assert any of the protections provided in Ed 1128 if:

(1) The pupil has been determined to be eligible for special education under Chapter Ed 1100; or

(2) The school or local school board had knowledge in accordance with (h) below that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(h) A school district shall be deemed to have knowledge that a child is a child with a disability if:

(1) The parent of the child has expressed concern in writing, unless the parent is illiterate or has a disability that prevents compliance with the requirements contained in this paragraph, in which case said parent has expressed concern by other means, to administrative staff or other involved personnel that the child is in need of special education and related services;

(2) The behavior or performance of the child has demonstrated the need for such services due to a potential disability;

(3) The parent of the child has requested an evaluation of the child pursuant to Ed 1107; or

(4) The teacher of the child, or other personnel of the school district, has stated, in writing, substantial concern about the recent behavior or performance of the child to the director of special education of such agency;

(i) If a school or local school board does not have knowledge that a child is a child with a disability in accordance with (h) above, prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities who engaged in comparable behaviors consistent with the following:

(1) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under paragraph (g) and (h), the evaluation shall be conducted in an expedited manner;

(2) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the school district and information provided by the parents, the agency shall provide special education and related services in accordance with Chapter Ed 1100.;

(j) Pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

Source. #6109, eff 10-28-95; ss by #6366, eff 10-30-96; and by #6820, eff 9-1-98

#### **Ed 317.04 Disciplinary Procedures.**

(a) There shall be the following levels of discipline available to school officials enforcing RSA 193:13 relative to the suspension and expulsion of pupils in a safe school zone:

(1) A suspension for gross misconduct or for neglect or refusal to conform to the reasonable rules of the school under RSA 193:13, I shall be considered a pension and shall be administered by a superintendent or designee for a period not to exceed 10 school days;

(2) A suspension for an act of theft, destruction, or violence as defined in RSA 193-D, or for possession of a pellet or BB gun or rifle under RSA 193:13, II shall be considered a long-term suspension and shall be administered by the school board or designee in order to continue the short-term suspension for a period in excess of 10 school days, provided the designee is not the person who suspended the pupil for 10 school days under (1) above, and that designee provides a due process hearing under (s)(2) below;

(3) An expulsion by the local school board for a period determined in writing by the board under RSA 193:13, II; and

(4) An expulsion by the local school board for a period of not less than 12 months under RSA 193:13, III.

(b) Prior to initiating any disciplinary action listed in paragraph (a), each school board shall adopt a policy under RSA 189:15 which prescribes the manner in which the student body shall be informed concerning the content of RSA 193:13 through announced, posted, or printed school rules.

(c) If the school and school board have met the requirements of paragraph (b) a pupil appealing a local decision to the state board may not be allowed to claim lack of knowledge of the state law requiring expulsion for bringing or possessing a firearm or other dangerous weapon as defined in these rules.

(d) Due process in disciplinary proceedings shall include, at a minimum, the following:

(1) In a short-term suspension:

- a. The superintendent or designee shall inform the pupil of the purpose of the meeting;
- b. Oral or written notice of the charges and an explanation of the evidence against the pupil;
- c. An opportunity for the pupil to present his/her side of the story;
- d. A written statement to the pupil and at least one of the pupil's parents or guardian explaining any disciplinary action taken against the student;

(2) In a long-term suspension of a pupil:

- a. Written communication to the pupil and at least one of the pupil's parents or guardian, delivered in person or by mail to the pupil's last known address, of the charges and an explanation of the evidence against the pupil;
- b. The superintendent's written or oral recommendation for student action to correct the discipline problem;
- c. A hearing in accordance with Ed 317.04 (d)(3)g. below;
- d. a written decision which includes the legal and factual basis for the conclusion that the pupil should be suspended;
- e. If the hearing was conducted by the school board's designee, the decision may be appealed to the local school board under RSA 193:13, I; and
- f. If the hearing was conducted by the school board, the decision may be appealed to the state board;

(3) In an expulsion by the local school board, due process shall include the following minimal requirements:

- a. A formal hearing shall be held before any expulsion;
- b. Such hearing may be held either before or after the short-term suspension has expired and pending the expulsion hearing;
- c. If the hearing is held after the expiration of a short-term suspension, the pupil shall be entitled to return to school after the short-term suspension has expired and pending the expulsion hearing.
- d. The school board shall provide written notice to the pupil and at least one of the pupil's parents or guardian, delivered in person or by mail to the pupil's last known address of the date, time and place for a hearing before the local board;
- e. The written notice required by d. above shall include:

1. A written statement of the charges and the nature of the evidence against the pupil; and

2. A superintendent's written recommendation for school board action and a description of the process used by the superintendent to reach his/her recommendation;

f. This notice shall be delivered to the pupil and at least one of the pupil's parents or guardian at least 5 days prior to the hearing.

g. The following hearing procedures shall apply:

1. The pupil, together with a parent or guardian may waive the right to a hearing and admit to the charges made by the superintendent;

2. If the pupil is 18 years of age or older, the concurrence of a parent or guardian shall be unnecessary unless the pupil is subject to a guardianship which would prevent the pupil from waiving the right to a hearing;

3. Formal rules of evidence shall not be applicable, however, school officials shall present evidence in support of the charge(s) and the accused pupil or his/her parent or guardian shall have an opportunity to present any defense or reply;

4. The hearing shall be either public or private and the choice shall be that of the pupil or his parent or guardian; and

5. During the hearing, the pupil, parent, guardian or counsel representing the pupil, shall have the right to examine any and all witnesses;

h. The decision of the school board shall be based on a dispassionate and fair consideration of substantial evidence that the accused pupil committed the act for which expulsion is to be imposed and that such acts are, in fact, a proper reason for expulsion;

i. The decision shall state whether the student is expelled and the length of the expulsion. If the decision is to expel the pupil the decision shall include the legal and factual basis for the decision;

j. A statement of the time period for which the student is expelled and any action the student may take to be restored by the board; and

(e) A decision shall include a statement that the pupil has the right to appeal the decision to the state board of education.

(f) All appeals to the state board allowed under RSA 193:13, II or III shall be filed within 20 calendar days of receipt of the written decision of the local school board and shall be in accordance with RSA 541-A and Ed 200.

Source. #6109, eff 10-28-95; ss by #6366, eff 10-30-96

**Ed 317.05 Reporting Procedures.**

- (a) In accordance with RSA 193-D:4, each written report by a supervisor to the principal relating to an act of theft, destruction, or violence in a safe school zone shall be on standardized form #Ed 317.
- (b) The report by a supervisor to a principal on Form #Ed 317 shall contain all the statutory information required by RSA 193-D:4.
- (c) Form #Ed 317 shall be completed and filed with the local law enforcement authority within 48 hours of such incident.
- (d) Form #Ed 317 shall contain the following information:
  - (1) School name;
  - (2) School address;
  - (3) School telephone number;
  - (4) Name of school principal;
  - (5) Date of incident involving an act of theft, destruction, or violence, or the possession of a firearm;
  - (6) Time of incident in (5) above;
  - (7) Location of incident in (5) above;
  - (8) Alleged offense;
  - (9) Description of incident;
  - (10) Name of suspect;
  - (11) Grade in school of suspect;
  - (12) Address of suspect;
  - (13) Gender of suspect;
  - (14) Name of victim;
  - (15) Grade in school of victim;
  - (16) Address of victim;
  - (17) Gender of victim;

- (18) Name of employee reporting incident;
- (19) Date report was completed by employee;
- (20) Date report was filed with local law enforcement authority by school principal.

(e) A school district reporting a crime committed by a child with a disability shall ensure that copies of the relevant portions of the special education and disciplinary records of the child are made available in a manner that protects the privacy of students records for consideration by the appropriate authorities to whom it reports the crime.

(f) A school district shall complete and file Form Ed 317-Fed, Report on Students Disciplined Under the Gun Free School Act of 1994, with the commissioner on or before June 30 of each year.

(g) Form Ed 317-Fed shall contain the following information:

- (1) Name of school district;
- (2) School name;
- (3) Pupil's grade in school;
- (4) Type of firearm:
  - a. Handgun;
  - b. Rifle/shotgun; or
  - c. Other firearm;
- (5) Number of expulsions modified to less than 12 months;
- (6) Number of modifications for students who are not students with educational disabilities; and
- (7) Number of expulsions which resulted in a referral to an alternative school or program.

Source. #6109, eff 10-28-95; ss by #6366, eff 10-30-96; and by #6820, eff 9-1-98

**Ed 317.06 Student with an Educational Disability.**

(a) Any suspension or expulsion of a student with an educational disability as defined in Ed 1102.31 shall be in accordance with Ed 1119.11.

(b) In the case of a student with an educational disability who is determined to have brought a firearm as defined in 18 USC 921 (a)(3) the federal requirement of section 612 (a)(1) of Public Law 105-17, 20 USC 1415 shall apply, and the student may be placed in an interim alternative educational setting for the time periods pursuant to federal law.

Source. #6109, eff 10-28-95; ss by #6366, eff 10-30-96; and by #6820, eff 9-1-98

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