

TO THE MEMBERS OF THE SCHOOL BOARD

Re: Expulsion Hearing

ATTORNEY-CLIENT
CONFIDENTIAL COMMUNICATION

Dear Board Member:

Enclosed with this letter each of you will find a meeting notice/agenda and an expulsion hearing notice. Because, for some of you, this is the first expulsion hearing in which you will participate, I hope to provide you with some information related to the hearing and expulsion in general.

It is important to note that this is a hearing which entitles the student to due process of law. To avoid issues being raised with regard to due process, I have the following suggestions:

BEFORE THE HEARING:

1. Do not discuss this matter with each other, administrators, members of the community, faculty members, the student, the student's parents or anyone else prior to the hearing. The student is entitled to a fair and unbiased hearing panel and holding discussions in advance of the hearing can compromise impartiality.
2. Do not express an opinion to anyone in advance of the hearing as to what you believe the outcome of the hearing should be.
3. Keep this matter confidential.
4. If the Board President is asked for subpoenas, they should be issued. Please give me a call if this occurs.
5. If the student or his parent request of any board member additional time to prepare for the hearing, contact me immediately. Failure to grant reasonable requests for extensions has been held to be a violation of due process.

AT THE HEARING:

1. You must be present for the entire hearing to participate in the discussion and to ultimately vote on the expulsion question.
2. Only issues brought up in the notice of expulsion hearing and the listed reason for considering expulsion may be used in determining whether or not to expel the student. Other information, from whatever source, should be neither discussed nor used in making the final determination. The exception to this is that the Board may consider pupil records (both academic and behavioral) in determining the length of the expulsion period.

3. You have the right to ask questions of witnesses. However, you should not ask questions unrelated to the reason set forth in the notice.

4. If, for any reason, you believe you cannot be unbiased and impartial as a decision maker in this matter, you should excuse yourself from hearing this matter.

5. If there are breaks during the hearing, you should not discuss the expulsion matter until after all the evidence has been presented.

6. At the conclusion of the hearing, the Board should make written findings and issue a written order. Also, written minutes of the hearing must be kept. The Board is under no obligation to render an oral decision the night of the hearing but can do so if it wishes.

7. The Board must make certain specific findings that relate to the allegations raised in the expulsion notice. When the notice states that the grounds for expulsion are based on an allegation that the student has repeatedly neglected or refused to violate school rules, the Board must answer the following questions:

* → a. Did the student neglectfully or deliberately violate a school rule or rules? The Board should be able to identify the rule violated and the conduct that violated that rule. There must also be some evidence that the student had knowledge of the rule or evidence that information (such as a student handbook) identifying the rule and consequences for violation of the rule were provided to the student. The Administration must prove not only that the conduct occurred but also that the student's conduct was neglectful or deliberate. This implies that the student either knew or had reason to know of a rule and either carelessly or intentionally disregarded it. If the answer to this question is "no," you can't expel the student and you should not proceed to the next question. If the answer is "yes," proceed to the next question.

* → b. Was the student's conduct repeated? For the Board to expel a student on this basis, the Board must find that the student repeatedly violated school rules. This does not mean, however, that the Administration has to prove that the same rule was repeatedly violated. For example, if the school has rules prohibiting tobacco use, alcohol use and swearing, if the student engages in one of these behaviors on three separate occasions, the legal criteria have been met. However, if the Administration alleges several occasions on which the student violated rules but is only able to prove to the Board's satisfaction that one event actually occurred, the Board cannot expel the student. If the answer to this question is "no," you can't expel the student and you should not proceed to the next question. If the answer is "yes," proceed to the next question.

* → c. Does the interest of the school demand the student's expulsion? In other words, does serving the interest of the school community at large require the expulsion of the student? If the answer to this question is "no," you can't expel the student and you should not proceed to the next question. If the answer is "yes," proceed to the next question.

(cont.)



- d. For how long should the student be expelled? This is entirely within the Board's discretion and can be anywhere from "time served" (the time during the suspension leading up to the expulsion hearing) to age 21.

Eileen