



# Student HEARING Rights

**Suspension,  
Exclusion,  
Expulsion,  
and  
Mandatory  
Reassignment**

*This information has been  
compiled for your service from  
the due process procedures  
of the Omaha Public Schools. If  
you have any questions, please  
contact your school principal  
or call the Hearing Office at  
531-299-0466.*



## STUDENT HEARING RIGHTS

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The information provided in this brochure summarizes the rights of students who are recommended for Emergency Exclusion, Long-Term Suspension, Expulsion, or Mandatory Reassignment from classes in the Omaha Public Schools as set forth in Board Policies 5101, 5101A and 5101B, and in accordance with sections 79-254 to 79-294 of Nebraska statutes AND who have also requested a hearing. The Student Code of Conduct sets the behavior that may result in a Long-Term Suspension, Expulsion, or Mandatory Reassignment.

Within two (2) school days of the decision to Long-Term Suspend, Expel, or Mandatory Reassign a student, the school must send written notice by registered or certified mail to the student and the parent/guardian that includes the following:

- a. Violation and Summary of Evidence. The student conduct, the section(s) of the Student Code of Conduct the student is alleged to have violated, and a summary of the evidence to be presented against the student.
- b. Recommended Discipline. The discipline response which the Principal or designee has recommended and any other action to which the student may be subject.
- c. Right to a Hearing. A statement that before the proposed discipline can be imposed, the student shall have the right to a hearing, upon request, on the specified charges, an explanation of how to request a hearing, and the deadline for requesting a hearing.
- d. Hearing Procedures. A description of the hearing procedures along with procedures for appealing any decision rendered at the hearing, reflecting the procedures set forth Policy 5101A and Policy 5101B.
- e. Right to Review Evidence. A statement that the Principal or designee, legal counsel for the school, the student, the student's parent/guardian, or the student's representative has the right (i) to examine the student's academic and disciplinary records and any affidavits to be used at the hearing concerning the alleged misconduct and (ii) to know the identity of the witnesses to appear at the hearing and the substance of their testimony.
- f. Request for Hearing Form. A form on which the student, the student's parent/guardian, or the student's representative may request a discipline hearing, to be signed by such parties and delivered to the Principal or Superintendent in person or by registered or certified mail.
- g. Period of Suspension. A description of the Status of the Student including the beginning and ending dates of the Long-Term Suspension, Expulsion or Mandatory Reassignment.
- h. School Work. A statement that if the student is suspended pending the outcome of the hearing, the student may complete classwork and homework, including, but not limited to, examinations, missed during the period of suspension pursuant to District guidelines which shall not require the student to attend the school district's alternative programs for expelled students in order to complete classwork or homework

If the student, parent/guardian or the student's representative requests a hearing within five (5) school days after the student's receipt of the written notice, the student shall remain suspended until the student, parent/guardian or the student's representative has received written notice of the decision of the Executive Director as set forth in 5101B F.

If the student, parent/guardian or the student's representative requests a hearing more than five (5) school days but not more than 30 calendar days following the student's receipt of the written notice, the hearing shall be held but the imposed consequence shall continue in effect, pending final determination.

# HEARING PROCEDURES

## 1. Pre-Hearing Activity

- a. The Executive Director shall recommend a hearing examiner within two (2) school days after receiving the request for a hearing.
  - i. The student or the student's parent or guardian may request designation of a hearing examiner other than the hearing examiner recommended by the Executive Director by submitting a written request within two (2) school days after receipt of the Executive Director's recommended appointment.
  - ii. Upon receiving such written request, the Executive Director shall provide the student or the student's parent or guardian with one alternative hearing examiner who is not an employee of the school district or otherwise currently under contract with the school district and whose impartiality may not otherwise be reasonably questioned. The Executive Director may also provide an additional list of hearing examiners that may include hearing examiners employed by or under contract with the school district.
  - iii. The student or the student's parent or guardian shall, within five (5) school days, select a hearing examiner to conduct the hearing from the options provided by notifying the Executive Director in writing of the selection. The Executive Director shall appoint the selected hearing examiner upon receipt of such notice.
- b. Within two (2) school days of appointment, the hearing examiner shall schedule a hearing to occur no later than five (5) school days after the appointment of the Hearing Examiner
  - i. In no case shall a hearing be held with less than two days' notice to the parties, unless all parties consent.
  - ii. The time for the hearing may be changed by the hearing examiner for good cause.
- c. The hearing examiner must give written notice of the time and place for the hearing to the Principal or designee, legal counsel for the District, and to the student, the student's parent/guardian, or the student's representative which shall also include that the parties have the right to:
  - i. examine, prior to the hearing, the student's educational records and any written statements to be used at the hearing; and
  - ii. request the presence of student witnesses.
- d. If the student, the student's parent/guardian, or the student's representative want to have another student ("student witness") testify on the student's behalf or be present to answer questions about the statements the student witness made in affidavit form, the student shall so notify the hearing examiner.
  - i. Upon receipt of such notice regarding a request for a student witness, the hearing examiner will promptly notify the Principal or designee indicating the request being made and explaining the reason for the request.
  - ii. Upon receipt of such notice from the hearing examiner, the Principal or designee shall promptly contact the parent/guardian of the requested student witness and send home with the student witness a **Student Witness Parent Consent Form (SP20)** to the parent/guardian to indicate the parent/guardian's applicable response.
  - iii. The Principal or designee shall make appropriate arrangements to see that any student witness and the student witness's parent/guardian understand the seriousness of the matter and request that the signed **SP20** be returned at the earliest possible time. The SP20 and, where applicable, the student witness's affidavit will be presented in the hearing.
  - iv. At no time will the Principal or designee influence the parent/guardian of student witnesses in their response to the student's

request that they provide testimony for the hearing. However, the Principal or designee shall answer their questions or refer the parent/guardian of student witnesses to the hearing examiner's office for any questions.

- v. When consent is obtained through the SP20, the Principal or designee will arrange appropriate transportation to bring requested student witness(es) to the hearing and return the student witness(es) to school after the hearing. All efforts will be made to reduce the time the student witness(es) is(are) absent from classes.
- vi. If parent/guardian consent for a student witness to provide testimony at a hearing, either in person or in affidavit form, is denied, the Principal or designee will state in the hearing for the hearing record the efforts to contact the parent/guardian and the results of that conversation and will present the SP20 showing the applicable denial or state that the SP20 was not returned.

## 2. The Hearing

- a. If more than one student is charged with a violation of the same rule and acted in concert and when the facts are substantially the same for all such students, a single hearing may be held for any students who requested a hearing, unless a single hearing is likely to result in confusion or one or more of the students' interests may be substantially prejudiced, as determined by the hearing examiner. This determination by the hearing examiner that a separate hearing is required for one or more students may be made before or during any hearing.
- b. Role of the Hearing Examiner.
  - i. The hearing examiner must be available prior to the hearing to answer any questions the Principal or designee, the student, the student's parent/guardian, or the student's representative may have about the hearing procedures.
  - ii. The hearing examiner's primary duty is to remain impartial throughout the entire hearing process. Because the hearing examiner's basic function is similar to that of a judge, the hearing examiner may ask questions of the student, any witnesses presented by the student, the Principal or designee, and any witnesses presented by the Principal or designee. The hearing examiner should not under any circumstances present the student's or the Principal or designee's case for them by asking questions which are the responsibility of the student, the student's parent/guardian, or the student's representative or the Principal or designee to ask.
- c. Evidence
  - i. Witnesses providing in-person testimony at the hearing.
    - 1. School personnel witnesses. Any school employees with knowledge of the events leading up to the Emergency Exclusion, Short-Term Suspension, Long-Term/Suspension, Expulsion, or Mandatory Reassignment of Student (hereafter Exclusion or Sanction) shall testify in person if so requested by the Principal or designee or by the student, the student's parent/guardian, or the student's representative.
    - 2. Student witnesses. No student witness under the age of 19 may testify for either party in a hearing without the written consent of the student witness and the student witness's parent/guardian.
  - ii. Use of witness statements in affidavit form.
    - 1. Statements in writing of persons having knowledge of the events leading up to the Exclusion or sanction may be introduced at the hearing and considered by the hearing examiner only if they are in proper affidavit form recognized by the courts of the state of Nebraska.



in proper affidavit form recognized by the courts of the state of Nebraska containing the sworn statements of anyone else having knowledge of the circumstances leading to the recommended Exclusion or Sanction.

- iv. The student, the student's parent/guardian, or the student's representative may question any witness for the Principal, including the Principal and designee.
  - v. Upon completion of the school's presentation, the student, the student's parent/guardian, or the student's representative shall present their case in the same manner as described above. They may present witnesses, make statements themselves, and/or introduce physical evidence or affidavits containing sworn statements or anyone having knowledge of the circumstances leading to the recommended Exclusion or Sanction.
  - vi. The presenting party for the school may question any witness for the student, including the student if the student has offered testimony, provided that the student may choose not to testify and may not be punished in any way for not testifying.
  - vii. In person witnesses will be present during the hearing only when testifying. Any person giving testimony is given the same immunity from liability as a person testifying in court.
  - viii. The Hearing proceedings shall be recorded at the expense of the District.
  - ix. Anyone may be excluded from the hearing if the hearing examiner, in his/her sole discretion, determines the person is, or poses a risk of, substantially disrupting the proceedings.
  - x. The hearing examiner is not bound by the rules of evidence or any other courtroom procedure, except that all testimony shall be under oath administered by the hearing examiner.
- e. Report of the Hearing Examiner
- i. The hearing examiner should make their written report to the Executive Director within three (3) school days of the completion of the hearing.
  - ii. The hearing examiner's report shall contain their written finding, based on a preponderance of the evidence, only on the question *Did the student engage in the action specified in the charge by the Principal or designee that resulted in the proposed Exclusion or Sanction?* and the reasons for this finding.
  - iii. If the hearing examiner determines that the student engaged in the action specified in the charge by the Principal or designee that resulted in the proposed Exclusion or Sanction, the hearing examiner may choose to impose:
    - 1. No Exclusion or Sanction;
    - 2. The same Exclusion or Sanction the Principal or designee recommended; or
    - 3. An Exclusion or Sanction that is less or more severe than the Principal or designee recommended, provided the Exclusion or Sanction is consistent with the Student Code of Conduct's provisions regarding Exclusions or Sanctions.
  - iv. In making this report, the hearing examiner may consider only the evidence presented at the hearing. The hearing examiner may not rely on own personal knowledge or seek evidence from any other source.
- f. Review by the Executive Director
- i. The written report of the hearing examiner shall be given to the Executive Director.

- ii. The Executive Director shall review the hearing examiner's written report and make an independent decision based solely on the evidence presented to the hearing examiner.
    1. The Executive Director must complete the review of the hearing examiner's report within five (5) days of receipt of the report from the hearing examiner.
    2. The Executive Director may revise the Exclusion or Sanction recommended by the hearing examiner but may not impose a more severe Exclusion or Sanction than that recommended by the hearing examiner. Any Exclusion or Sanction imposed by the Executive Director must be consistent with the provisions regarding Exclusion or Sanctions as found in the Student Code of Conduct.
  - iii. Upon completion of the review of the hearing examiner's report and determination of the Exclusion or Sanction to be imposed, the Executive Director shall submit the report to the Superintendent who shall notify the student, the student's parent/guardian, and the student's representative in writing of that determination no later than 10 days following completion of the hearing. This written notice shall be sent by certified mail or registered mail or personally delivered to the student, the student's parent/guardian, and the student's representative. The Executive Director shall provide the Principal or designee with a copy of the decision.
    1. The decision of the Executive Director shall take effect immediately upon receipt of the notice by the student, the student's parent/guardian, or the student's representative.
    2. If the misconduct that led to a hearing before a hearing examiner occurred prior to the last ten school days of the first semester and the expulsion takes effect in the second semester because the recommendation for expulsion was appealed to a hearing examiner, the length of the expulsion shall not exceed the number of days it would have been in effect had the appeal not been made.
3. Appeal to the Board of Education.
- a. Within seven (7) school days of receipt of the written notice of the Executive Director's decision, the student, the student's parent/guardian, or the student's representative (each, an "Appeal Representative") may appeal the Executive Director's decision to the Board of Education by filing a written request for an appeal with the Secretary to the Board of Education ("Board Appeal").
  - b. The hearing on the Board Appeal ("Board Appeal Hearing") must be held within ten (10) school days after receipt of the Board Appeal by the Secretary to the Board of Education; provided that the Board Appeal Hearing may be heard at a later date by mutual agreement of the student, the student's parent/guardian, or the student's representative and the Secretary to the Board of Education.
  - c. The record for the Board Appeal Hearing shall consist of the charge by the Principal or designee, the notice of the charge, the student's written request for a hearing, the written notice of the date and time of the hearing with the hearing examiner, the evidence presented to the hearing examiner, the hearing examiner's written report, the decision of the Executive Director, Policies 5101–5101B of the Policies and Regulations of Douglas County School District No. 0001, any pertinent finding of the Board of Education on the appropriateness of mandatory penalties, any pertinent individual school rules, a written transcript of the hearing before the hearing examiner, the student's request for the Board Appeal, and the written notice of the date and time of the Board Appeal Hearing. A copy of the record shall be provided to all concerned parties involved with the Board Appeal.



- d. Additional Evidence at the Board Appeal Hearing
  - i. Evidence not presented to the hearing examiner may be presented at the Board Appeal by either the Executive Director or Appeal Representative only if presentation of such new evidence is necessary to avoid a substantial threat of unfairness.
  - ii. Any party proposing to offer new evidence shall submit such new evidence to the Secretary to the Board of Education no later than 24 hours prior to the Board Appeal. Upon receipt of any new evidence, the Secretary to the Board of Education, shall immediately forward that evidence to all parties.
  - iii. The date and time for Board Appeal Hearing shall be arranged by the Secretary to the Board of Education, with the parties and the Board members.
- e. The Board Appeal shall be heard by at least three members of the Board of Education, except for cases where the prescribed penalty is expulsion for one calendar year, in which case the Board Appeal must be heard by at least five members of the Board. The Secretary to the Board of Education shall notify all Board members of the existence of a Board Appeal and shall secure the presence of a sufficient number of Board of Education members to attend such Board Appeal Hearing.
- f. Board Appeal Hearing Procedure.
  - i. The President of the Board of Education shall preside over the Board Appeal Hearing. In the absence of the President, the Vice President of the Board of Education shall preside over the Board Appeal Hearing. In the absence of both the President and the Vice President of the Board of Education, the Secretary to the Board of Education shall designate on a rotation basis, another member of the Board Appeal Hearing to preside over the Board Appeal Hearing. The presiding officer shall maintain appropriate order, announce the opening of the meeting, recognize and identify those persons present, and determine who may speak when.
    - 1. The Secretary to the Board of Education shall attend the Board Appeal Hearing including the deliberations.
  - ii. It shall be the duty of all Board Appeal Hearing members to be impartial throughout the Board Appeal Hearing.
  - iii. Board Appeal Hearing members may only participate in deliberations relating to the Board Appeal if they are present for the entire Board Appeal Hearing.
  - iv. The Board Appeal Hearing shall be conducted according to the following procedures:
    - 1. The presiding officer shall open the meeting and announce that it will be conducted in accordance with Sections 79-254 to 79-294, R.R.S. Neb. 1976, and the public meeting statute.
    - 2. The presiding officer shall recognize and identify all those present.
    - 3. The presiding officer shall give the Appeal Representative the opportunity to request a public hearing.
    - 4. If the Appeal Representative does not request a public hearing, the Board Appeal Hearing shall go into closed session upon the motion of one member, the second of another and the affirmative vote of a majority of the members of the Board Appeal Hearing present on a roll call vote. Both the vote and the time of going into closed session shall be recorded by the Secretary to the Board of Education.
    - 5. The presiding officer should inform the parties about the procedure for the Board Appeal Hearing, the order of presentation, that the record for the Board Appeal Hearing has been received and need not be repeated, and that

information not presented to the hearing examiner may not be referred to in their statements to the Board Appeal Hearing.

6. The presiding officer shall next determine whether there is any new evidence to be presented. If either party indicates that they wish to offer new evidence at the Board Appeal Hearing, the presiding officer shall:
  - a. Determine whether the new evidence was submitted pursuant to Policy 5101B H.4.;
  - b. If the presiding officer determines the new evidence was submitted pursuant to 5101B H.4., inquire of the party offering the new information why they think the information is necessary to avoid a substantial threat of unfairness. The other party shall be given an opportunity to comment on whether the new evidence should be heard by the Board Appeal Hearing.
7. Following comments from both parties, the Board Appeal Hearing members must determine, by a majority vote of those present, whether the new evidence is necessary to avoid a substantial threat of unfairness.
  - a. If a majority of the Board Appeal Hearing determine the new evidence is necessary to avoid a substantial threat of unfairness, the new evidence shall be received and shall become a part of the record.
  - b. If a majority of the Board Appeal Hearing determine the new evidence is NOT necessary to avoid a substantial threat of unfairness, the new evidence shall not be received, shall not become a part of the record, and shall not be mentioned by either party.
8. Presentation of the Appeal Representative
  - a. The presiding officer shall next call upon the Appeal Representative to tell the Board Appeal Hearing why they think the decision of the Executive Director should not be carried out.
  - b. The Executive Director or their representative shall have an opportunity to ask the Appeal Representative questions about any new evidence presented and to cross-examine any witness giving new evidence.
  - c. Following questioning by the Executive Director, Board Appeal Hearing members may also ask questions of the Appeal Representative relating their presentation and any new evidence.
9. Presentation of the Executive Director
  - a. The presiding officer shall next call upon the Executive Director or their representative to explain why the Executive Director's decision should be carried out.
  - b. The Appeal Representative shall have an opportunity to ask the Executive Director or representative questions about any new evidence presented and to cross-examine any witness giving new information.
  - c. Following questioning by the student or the Appeal Representative, Board Appeal Hearing members may also ask questions of the Executive Director or their representative relating their presentation and any new evidence.

10. Following completion of the presentation by both parties, the Board Appeal Hearing members may ask questions of either party about any matter in the record before the Board Appeal Hearing including any further questions about new evidence that has been submitted.
11. Following questions by Board Appeal Hearing members, the presiding officer should inquire whether either party wishes to make any other statement.
12. The presiding officer shall then close the Board Appeal Hearing and inform the parties that the Board Appeal Hearing members will deliberate privately on the Board Appeal and inform the parties of its decision thereafter by personal delivery or certified or registered mail to the student, the student's parent/guardian, or the student's representative.
13. Following completion of the Board Appeal Hearing, the Board Appeal Hearing members shall deliberate privately on the Board Appeal.
  - a. If the Board Appeal Hearing members decides that more information is necessary to reach a decision, they may reopen the Board Appeal Hearing and request any information from the parties. Each party has the right to be present if the Board Appeal Hearing is reopened.
  - b. The decision of the Board Appeal Hearing must be based on the record before it.
  - c. The Board Appeal Hearing may alter the decision of the Executive Director, including the penalty of a one calendar year expulsion, provided such alteration does not impose a more severe Exclusion or Sanction on the student.
    - i. Any Exclusion or Sanction imposed by the Board Appeal Hearing must be consistent with the Student Code of Conduct's provisions regarding Exclusion or Sanctions.
14. The decision of the Board Appeal Hearing must be made within three (3) school days from the date of the closing of the Board Appeal Hearing. This decision shall be personally delivered or sent by registered or certified mail to the student, parent or guardian and the student's representative (if any) within one school day of the time the Board Appeal Hearing reaches its decision.
15. The decision of the Board Appeal Hearing is considered a decision by the Board of Education. As such, there is no further appeal to the Board of Education from a decision of the Board Appeal Hearing.
16. If the misconduct that led to a Board Appeal Hearing occurred prior to the last ten school days of the first semester and the expulsion takes effect in the second semester because the recommendation for expulsion was appealed to Board Appeal Hearing, the length of the expulsion shall not exceed the number of days it would have been in effect had the appeal not been made.



Omaha Public Schools does not discriminate on the basis of race, color, national origin, religion, sex (including pregnancy), marital status, sexual orientation, disability, age, genetic information, gender identity, gender expression, citizenship status, veteran status, political affiliation or economic status in its programs, activities and employment and provides equal access to the Boy Scouts and other designated youth groups. The following individual has been designated to accept allegations regarding non-discrimination policies: Superintendent of Schools, 3215 Cuming Street, Omaha, NE 68131 (531-299-9822). The following persons have been designated to handle inquiries regarding the non-discrimination policies: Director of Equity and Diversity, 3215 Cuming Street, Omaha, NE 68131 (531-299-0307).