

**JCEB-R Student Hearing Procedure**

7/17/20

**RATIONALE/OBJECTIVE:**

A student may be subject to Long-Term Suspension or Expulsion, as defined below, for the violation of school rules and/or Rules of the Cobb County School District (District), but only after the student has been afforded notice and an opportunity for hearing and other procedural requirements set forth below have occurred.

**RULE:****A. DEFINITIONS:**

1. "Long-Term Suspension" means the suspension of a student from school for more than ten (10) school days, but not beyond the current school quarter or semester.
2. "Expulsion" means suspension of a student from school beyond the current school quarter or semester.

**B. STUDENTS WITH DISABILITIES:**

1. When long-term suspension or expulsion is proposed to be administered to a student who has been identified as a student with disabilities pursuant to either Section 504 or IDEA, the additional due process procedures outlined in Administrative Rule JDD(1)-R (Suspension/Expulsion of Disabled Students) may be applicable.
2. Nothing in this Rule shall be interpreted to infringe on any right provided to students by the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

**C. HEARING PROCEDURES:****1. Notification:**

- a. When Long-Term Suspension or Expulsion is recommended by the school and/or an opportunity for a disciplinary hearing is required, and the hearing is not waived or may not be waived, the Principal shall provide, within 24 hours of the initial suspension, written notification of the hearing to the student/parent/guardian. This notification may be included in the required suspension letter. The notification shall include the following:
  - (1) A brief statement of the act(s) student is alleged to have committed, along with a copy of the Code of Conduct allegedly violated.
  - (2) The maximum penalty which may be administered for the alleged misconduct.
  - (3) A copy of this Administrative Rule.
  - (4) The date, time and place for the hearing.
  - (5) A statement that a hearing is required for all recommended suspensions or expulsions over ten (10) school days unless the parent/guardian/student 18 years old or older waives the hearing.
  - (6) If a student is alleged to have committed a physical threat against a school employee or an act of physical violence, as defined by the Student Code of Conduct (Administrative Rule JCDA-R), a statement that a hearing is required, regardless of the recommended discipline. However, the letter should state that a disciplinary hearing regarding a recommendation for a short-term suspension (10 days of OSS or less) may be waived by the employee. A disciplinary hearing regarding a recommendation for long-term out of school suspension/expulsion (11 days of OSS or more) may be waived by the employee and the parent/guardian/student 18 years old or older.
  - (7) A statement that at the hearing the student is entitled to:

- (a) Be represented by an advocate of his/her choice, including an attorney if so desired; and
  - (b) Subpoena witnesses and to other compulsory process upon request.
- (8) A statement that all parties are afforded an opportunity to present and respond to evidence and to examine and cross-examine witnesses.
- b. **Delivery of Notification:**
  - (1) This notice, along with a summary of hearing procedures (Form JCEB-2) shall be delivered to the student and his/her parent/guardian either in person or by regular first-class mail and/or certified mail, return receipt requested, to the last known address of the parent or guardian.
  - (2) If notice is delivered in person, a written confirmation of delivery should be obtained.
  - (3) Service shall be deemed to be perfected when the notice is deposited in the United States mail with sufficient postage addressed to the last known address of the parent/guardian.
- 2. **Continuance:**

Parties may request a hearing continuance from the Student Support office. If a continuance is requested by the parent/guardian/student's representative, the student will continue to serve his/her recommended discipline during the time of the continuance and until the hearing is conducted and the Hearing Officer or Hearing Panel has rendered a decision.
- 3. **Waiver of Hearing:**
  - a. If the student (18 years old or older)/parent/guardian waive the hearing, they may do so by furnishing to the Principal a signed written waiver form (Form JCEB-1) prior to the notified time and date of the hearing. All waivers for recommended long-term suspension/expulsions of more than ten (10) school days must be processed by the Student Support office. All other waivers may be processed at the school level by contacting the Principal or designee.
  - b. If no written waiver form is received, or if the hearing may not be waived by the student 18 years old or older/parent/guardian, the hearing will be held as scheduled, whether or not the student/parent/guardian chooses to participate.
  - c. **Alternative Education Program Option:**
    - (1) If the student is recommended for long-term suspension/expulsion, the parent/guardian may waive the hearing and request of the Hearing Officer that the student be allowed to apply for enrollment in the District's Alternative Education Program (AEP) during the remainder of the suspension.
    - (2) If the student is not accepted into the program, he/she must serve the suspension/expulsion period as determined at the discipline hearing or waiver thereof.
    - (3) If the student is released from AEP for violation of his/her contract, he/she must continue to serve the suspension/expulsion period as determined at the discipline hearing or waiver thereof, and any additional consequences for this behavior as contemplated by the AEP contract and the appropriate code of conduct.
- 4. **Record of Proceedings:**
  - a. **Electronic Recording:**

A verbatim recording of the hearing shall be made and shall be available to all parties. The cost of recording shall be borne by the District. Parents/guardians/student's legal counsel may request a copy of the recording.
  - b. **Written Transcript:**

A written transcript will be prepared by the District if:

    - (1) The Cobb County Board of Education (Board) so requests; or
    - (2) The decision of the Board is appealed to the State Board of Education, in which case the appealing party shall be responsible for the cost of preparing a written transcript of the student disciplinary hearing.
      - (a) If the appealing party is indigent and cannot pay the cost of the transcript, he/she must file with the Superintendent or designee an Affidavit of Indigence to that effect (Form JCEB-8).
      - (b) Upon receipt of the Affidavit, the Superintendent or designee may inquire into the ability of the appealing party to pay for the transcript.

(c) After a hearing, the Superintendent or designee may order the appealing party to pay for the transcript by a certain date. Such order may be appealed pursuant to State Board of Education Rule 160-1-3-.04, School Law Tribunals and Appeals.

5. **Burden of Proof:**

The burden of proof shall be on the school, and it shall be entitled to open and conclude.

6. **Legal Representation/Involvement of an Attorney:**

If the student is represented by an attorney, the Board attorney shall be present to represent the District. The student/parent/guardian must notify the Hearing Officer no less than two days (excluding weekends and District breaks/holidays) prior to the hearing if the student will be represented by an attorney. Failure to give such notice will result in the hearing being continued so that the Board's attorney can be present.

7. **Presentation of Evidence:**

The evidence for the school shall be presented to the Superintendent's designee. The school's representative, the Board attorney, the student's representative, the Hearing Officer, and any member of the Hearing Panel are entitled to question witnesses about any matters which are relevant to the charges against the student or the appropriate discipline. The Hearing Officer has the authority to limit unproductively long or irrelevant questioning by non-panel members. The Hearing Officer shall have the right to allow into evidence prior acts showing a course of conduct leading to the acts in question.

8. **Procedural Objections:**

Objections to the sufficiency of the notice and or other procedural objections shall be waived unless written notice thereof is filed with the Hearing Officer no less than 24 hours prior to the time that the hearing is scheduled to begin. The hearing may be postponed until such defects have been removed or remedied.

**D. HEARING OFFICER OR HEARING PANEL:**

A hearing officer or three-member hearing panel may facilitate the student hearing process.

1. **Hearing Officer:**

- a. A qualified District office administrator may serve as the Superintendent's designee to sit as the District's Hearing Officer in cases where long-term suspension or expulsion is recommended by the school. A Hearing Officer will be considered qualified if he/she meets the requirements outlined in State Board Rule 160-4-8-.15.
- b. The Superintendent or designee shall ensure that individuals serving as hearing officers shall have initial training prior to serving as a hearing officer and undergo continuing education so as to continue in such capacity as outlined in State Board Rule 160-4-8-.15.
- c. The Hearing Officer shall have the authority to rule on Code of Conduct violations and assign consequences during hearings.
- d. During the hearing, the Hearing Officer will serve as the presiding officer and will rule on issues of law and admissibility of evidence presented during the hearing.
- e. The decision of the Hearing Officer shall be final and shall constitute the decision of the Board unless the student (18 years old or older)/parent/guardian appeals the decision in accordance with the appeal provisions set forth in this Rule.
- f. The Hearing Officer shall render a written decision at the end of the hearing and shall give a copy of the decision to the student and parent/guardian and the Principal or designee at the close of the hearing. The decision will include appeal information. If neither the parent/guardian nor student attends the hearing, the decision will be mailed within ten (10) calendar days of the hearing. The Hearing Officer shall maintain the District's records of the hearing.

2. **Hearing Panel:**

- a. A Hearing Panel, composed of three qualified administrators, may be convened to hear cases in which long-term suspension or expulsion is recommended by the school. A panel member will be considered qualified if he/she meets the requirements outlined in State Board Rule 160-4-8-.15.
- b. The Superintendent or designee shall ensure that individuals serving on a hearing panel shall have initial training prior to serving as a panel member and undergo continuing education so as to continue in such capacity as outlined in State Board Rule 160-4-8-.15.

- c. The pool of Hearing Panel members shall be comprised of all school administrators and some District office personnel, including the Hearing Officer. Hearing Panel members shall serve on a rotating basis.
- d. The District Hearing Officer shall be one of the Panel members and will also serve as the Panel's presiding officer to rule on issues of law and admissibility of evidence.
- e. When a Hearing Panel is utilized, at least two-thirds vote shall be required for a decision, and the Hearing Panel shall base its decision solely on the evidence received at the hearing.
- f. The decision of the Hearing Panel shall be final and shall constitute the decision of the Board unless the student (18 years old or older)/parent/guardian shall appeal the decision in accordance with the appeal provisions set forth below.
- g. The Hearing Panel shall render a written decision at the end of the hearing and shall give a copy of the decision to the student/parent/guardian and the Principal or designee at the close of the hearing. The decision will include appeal information. If neither the parent/guardian nor student attends the hearing, the decision will be mailed within ten (10) calendar days of the hearing. The Hearing Officer shall maintain the District's records of the hearing.

**E. APPEALS:**

- 1. The student (18 years old or older)/parent/guardian may appeal the decision of the Hearing Officer or Hearing Panel to the Board by filing with the Superintendent a written notice of appeal within twenty (20) calendar days of the Hearing Officer or Hearing Panel's date of decision.
- 2. The Superintendent shall have the authority to suspend the decision of the Hearing Officer or Hearing Panel during the period of appeal by the accused to the Board.
- 3. Upon the appeal of a decision of the Hearing Panel or Hearing Officer to the Board, the Board must render its decision within ten (10) days, excluding weekends and public and legal holidays, from the date the Board receives notice of the appeal. The decision shall be in writing and a copy shall be provided to the student/parent/guardian, the Principal, and Superintendent.
- 4. The Board will make its decision on the appeal in Executive Session. The Board's review will be based solely on the record and written briefs submitted by the student or his/her counsel and counsel for the school administration, if briefs are submitted. The Board shall not hear any oral arguments as part of an appeal nor shall it consider any evidence that was not presented to the Hearing Officer or Hearing Panel.
- 5. The Board may take any action it deems appropriate.
- 6. The student (18 years old or older)/parent/guardian may appeal the Board's decision to the State Board of Education pursuant to O.C.G.A. § 20-2-1160(b) through (f). If an appeal to the State Board is requested, a written transcript of the disciplinary hearing will be prepared and submitted to the State Board.

**F. ACTIVITIES WHILE UNDER LONG-TERM SUSPENSION OR EXPULSION:**

- 1. Students under Long-Term Suspension or Expulsion shall not participate in or attend school activities on or off campus or be present on any other Cobb County School campus. Students violating this Rule are subject to additional penalties.
- 2. Students under a long-term suspension or expulsion shall not be eligible to access District online courses in lieu of attending AEP.
- 3. During the time of this suspension, if school is not in session due to inclement weather or other reasons, the suspension time will be extended to cover any days missed.
- 4. A student may take final examinations and turn in long-term assignments assigned before the suspension or expulsion that are due during the suspension or expulsion. The Principal shall provide for the student's taking of final examinations. The examinations will occur either at the given time or through some special arrangement at the discretion of the Principal or designee.
- 5. Students who are permanently expelled are withdrawn from the District on the date of the expulsion and are only eligible to turn in assignments due prior to the date of the permanent expulsion.
- 6. Schools may recommend that a student be allowed to attend the Alternative Education Program (AEP) during his/her long-term suspension/expulsion. Upon this recommendation

