

# School Discipline Policy Q & A



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This policy Q & A addresses common questions regarding school discipline.

List of Questions – Click any question to jump to that question and its answer.

- [What is the purpose of the Nebraska Student Discipline Act?](#)
- [What authority does a school board have under the Nebraska Student Discipline Act?](#)
- [Can a school board authorize the exclusion of a student if it is an emergency?](#)
- [What is notice?](#)
- [What kinds of rules and regulations can school boards develop related to student discipline?](#)
- [Does the Nebraska Student Discipline Act apply to students with disabilities?](#)
- [Are school districts required to provide alternative education schools, classes, or education programs to students who are suspended or expelled?](#)
- [Why did the legislature require this ongoing opportunity for education to students who are expelled?](#)
- [What are the requirements for procedural due process for allowing students to complete work towards graduation?](#)
- [Does the school district have to provide the student an opportunity to complete school work?](#)

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## What is the purpose of the Nebraska Student Discipline Act?

Sections 79-254 to 79-294 of the Nebraska Revised Statutes are called the Nebraska Student Discipline Act, which was revised in 2008. The purpose of this act is to protect “elementary and secondary school students’ constitutional right to due process and fundamental fairness within the context of an orderly and effective educational process” (Neb. Rev. Stat. §79-255, 2008). This act gives students a right to due process and fairness, but this is balanced with the need to provide an orderly and effective educational process. This statute does not raise education to a fundamental right under the law. However, students with disabilities do have a statutory right to an education under the Individuals with Disabilities Education Act.

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## What authority does a school board have under the Nebraska Student Discipline Act?

A school board or board of education may add to the procedures provided in this act if they are not inconsistent with this act (Neb. Rev. Stat. §79-261(1), 2008). If the action taken by the school board or their employee is a material violation of the Student Discipline Act then the action will have no effect (Neb. Rev. Stat. §79-261(2), 2008). A school board is also permitted to adjust the responsibilities that would normally be given to superintendents or principals to other school officials (Neb. Rev. Stat. §79-261(3), 2008).

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### **Can a school board authorize the exclusion of a student if it is an emergency?**

A school board can authorize emergency exclusion of a student by suspension, expulsion, or mandatory reassignment for conduct prohibited by the board's rules or standards if the rule complies with the Student Discipline Act and the procedural requirements of the act are followed (Neb. Rev. Stat. §79-257, 2008). There are three emergency situations. If there is a "dangerous communicable disease" that can be caught through normal school contact and poses a threat to the health or safety of the community, then the student may be removed from school. In *Maack v. Lincoln Public Schools* (1992), two students were excluded from school because they had not been immunized and the presence of a disease was confirmed. The parent's choice not to immunize their children presented a clear threat to physical safety of themselves and other students, thus they were excluded from school (Maack, 1992). Second, if the student's conduct presents a "clear threat to the physical safety of himself, herself, or others" they may be excluded from school (Neb. Rev. Stat. §79-264(1)(a), 2008). Finally, if the student's conduct is so extremely disruptive that temporary removal is necessary to preserve the rights of other students to pursue an education, then the student can also be removed (Neb. Rev. Stat. §79-264(1)(b), 2008). Procedural requirements under 79-265 must still be followed, the suspension can be longer than five days, but the emergency exclusion has to be based upon a clear factual situation and cannot last longer than is necessary to avoid the dangers described above. If the emergency exclusion lasts more than five days, then the school board must adopt a procedure to have a hearing and a final determination that the school is in compliance with this act must be made within ten school days after the first day of exclusion (Neb. Rev. Stat. §79-264(2)-(3), 2008).

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### **What is notice?**

When notice is required under this act, it means written evidence of a statement, notice, recommendation, determination, or similar action is delivered personally; sent through certified or registered mail; and a receipt is received, or upon actual knowledge by a student or parent (Neb. Rev. Stat. §79-260, 2008). This is a less stringent standard than what civil trial courts would require because "actual knowledge" of the disciplinary action complies with the statute. However, a school district would need to know when they gave actual notice to the parent or student, so a phone log, registered mail receipts, and a meeting schedule should be kept so the administrator can provide evidence of exactly when notice was given and what

actions had been taken. Most school districts already have policies in place for giving notice and in all of the cases mentioned in these questions, written notice was sent to the home of the student, which complies with Neb. Rev. Stat. §79-265(3) (2008). Neb. Rev. Stat. §79-265 are the procedural requirements for suspending a student short term, which are discussed below. Neb. Rev. Stat. §79-267 is the grounds constituting long-term suspension, expulsion, and mandatory reassignment sanctions (See the [Policy Q & A on Suspension and Expulsion](#)).

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### **What kinds of rules and regulations can school boards develop related to student discipline?**

A school board shall establish rules and standards that are “reasonably necessary to carry out or to prevent interference with carrying out any educational function” (Neb. Rev. Stat. §79-262(1), 2008). These rules must be clear and definite so they provide clear notice to parents and students. A school board may specify a particular sanction for a certain act in their rules as long as that action is authorized under Neb. Rev. Stat. §79-258, 79-265, and 79-267. Neb. Rev. Stat. §79-258 gives a list of actions a school district could take for behavior issues, but it is not exhaustive.

Schools routinely include both rules and possible sanctions for violation of those rules in their Codes of Conduct. These codes are then distributed to students and parents (See the [Policy Q & A on Codes of Conduct](#)).

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### **Does the Nebraska Student Discipline Act apply to students with disabilities?**

The federal Individuals with Disabilities Education Act supersedes the Nebraska law if there is a conflict, but with that exception, the Nebraska law does apply to students with disabilities.

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### **Are school districts required to provide alternative education schools, classes, or education programs to students who are suspended or expelled?**

They are required to offer them. Nebraska Revised Statute §79-266(1) states that beginning on July 1, 1997, “each school district shall have an alternative school, class, or educational program or the procedures of subsection (2) of this section available or in operation for all expelled students” (2008). The statute does not say long-term suspended students, but only expelled students are required to be offered an education. However, if the student is offered one of the above options and declines to take advantage of it, then the school district is under no further obligation to provide an education (Neb. Rev. Stat. §79-266(1), 2008).

The law states that two or more schools can join together to provide alternative schools, classes, or programs and the statute adds suspended students to the list of students that an education can be provided for. The statute remains silent on whether these suspended

students only include long term or if students suspended for a short term can also be included in these programs. These issues are left up to the individual school district to decide.

A school district could decide to provide alternate education for students who are under short-term or long-term suspensions, or they could provide no education for suspended students. Schools can include quite a few different things in an educational program to comply with 79-266(1). These can include counseling programs, community-centered classroom experiences, educational programs, on-the-job training, and tutoring. These programs must include an individualized learning program that allows the student to continue to receive credit toward graduation. The State Department of Education was to develop rules and regulations concerning what these programs could look like (Neb. Rev. Stat. §79-266(1), 2008).

The Nebraska Department of Education regulations on this topic can be found in [Nebraska's Rule 17](#).

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### **Why did the legislature require this ongoing opportunity for education to students who are expelled?**

Under Nebraska law, schools are required to offer expelled students an opportunity to continue to make progress towards graduation. As a result, schools provide these students with an alternative school, class, or educational program during their period of their expulsion and reinstate them into the mainstream school once expulsion is served. The legislature was probably concerned about several issues. These include the economic issues for both the community and the student when students do not finish school, as well as the likelihood that expelled students are unsupervised in the community and therefore are more likely to violate the law. The policy may also work to correct for the incentives that the *No Child Left Behind Act* creates by not having to include expelled students in standardized test results under NCLB (For more information see [Education Expelled Students After No Child Left Behind: Mending an Incentive Structure that Discourages Alternative Education and Reinstatement](#).)

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### **What are the requirements for procedural due process for allowing students to complete work towards graduation?**

If the school district does not provide an alternative school, class, or educational program for expelled students, then the school district must follow the procedures in 79-266(2) prior to expelling a student unless the student is being expelled for bringing a firearm to school. First, a conference must be held to develop a plan for continuation of the student's education. Persons that can be involved in this conference are the parent or legal guardian, student, school representative, and a representative of either a community organization, which assists students, or an agency involved in juvenile justice. Second, the plan has to be in writing, adopted by a school administrator, and presented to the student and his parent or legal guardian. Third, the plan shall (a) "specify guidelines and consequences for behaviors which have been identified as preventing the student from achieving the desired benefits from the educational opportunities provided," (b) "identify educational objectives" that the student

must complete to receive credit towards graduation, specify the financial and community resources available to meet the educational and behavioral objectives specified in the plan, (c) and it must require the student to attend monthly reviews to assess whether the student is making progress towards the goals and objectives in the plan (Neb. Rev. Stat. §79-266(2), 2008).

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### **Does the school district have to provide the student an opportunity to complete school work?**

The school may give the student an opportunity to complete work. However, the school district must develop and adopt guidelines explaining what criteria will be used to determine whether and to what extent this opportunity will be granted and these guidelines shall be provided to the student and parent at the time of suspension (Neb. Rev. Stat. §79-265(5), 2008).

Developing the guidelines insures that schools are being fair about the opportunities they give to students and the guidelines being given to parents complies with notice requirements. It is important to note that the legislature specifically states in this subsection that allowing this opportunity for short-term suspensions is optional.

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