

tive rule or regulation or a code is adopted by reference, all requirements of statute for the publication of ordinances shall be satisfied if the summary of the ordinance or the ordinance incorporating the statute, regulation, ordinance or code is published in the required manner and if, prior to such publication, at least ~~three copies~~ one copy of the entire ordinance or of the statute, rule, regulation or code are marked as the official copies copy and filed for use and examination by the public in the office of the county auditor. Provisions of the entire ordinance or of the statute, rule, regulation or code thus incorporated in such ordinance by reference shall be as much a part of the ordinance as if they had been set out in full therein.

Sec. 50. Minnesota Statutes 1971, Section 599.13, is amended to read:

599.13 MUNICIPAL AND COUNTY ORDINANCES. Copies of the ordinances, bylaws, resolutions, and regulations of any city, village, ~~or~~ borough, or county, certified by the mayor or president of the council, and the clerk thereof, under its seal or by the county auditor or chairman of the county board, and copies of the same printed in any newspaper, book, pamphlet, or other form, and which purport to be published by authority of the council of such city or village, or county board, shall be prima facie evidence thereof and, after three years from the compilation and publication of any such book or pamphlet, shall be conclusive proof of the regularity of their adoption and publication.

Sec. 51. Minnesota Statutes 1971, Sections 394.06; 394.07; 394.08; 394.09; 394.10; 394.11; 394.12; 394.13; 394.14; 394.15; 394.16, as amended by Laws 1973, Chapter 35, Section 68; 394.17; 394.21, Subdivision 2; 394.22, Subdivision 5; 394.25, Subdivisions 5 and 6; 394.26, Subdivisions 1 and 3; 394.30, Subdivision 2; 394.31; 394.32, Subdivision 4; 396.01; 396.02; 396.03; 396.04; 396.05; 396.051; 396.06; 396.07; 396.08; 396.09; 396.10; 396.11; 396.12; 396.13; 396.14; 396.15; 396.16; 396.17; 396.18; 396.19; 396.20; and 396.21, are repealed.

Approved April 11, 1974.

CHAPTER 572—S.F.No.2580
[Coded]

An act relating to education; establishing grounds and procedures for the suspension, exclusion, and expulsion of public school pupils; repealing Minnesota Statutes 1971, Section 127.071.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[127.26] CITATION.** This act may be cited as "The pupil fair dismissal act of 1974".

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Sec. 2. [127.27] EDUCATION; PUPILS; SUSPENSION, EXCLUSION AND EXPULSION; DEFINITIONS. Subdivision 1. As used in sections 1 to 14, the terms defined in this section shall have the meanings assigned them.

Subd. 2. "Dismissal" means the denial of the appropriate educational program to any pupil, including exclusion, expulsion, and suspension.

Subd. 3. "District" means any school district or unorganized territory.

Subd. 4. "Exclusion" means an action taken by the school board to prevent enrollment or reenrollment of a pupil for a period that shall not extend beyond the school year.

Subd. 5. "Expulsion" means an action taken by a school board to prohibit an enrolled pupil from further attendance for a period that shall not extend beyond the school year.

Subd. 6. "Parent" means (a) one of the pupil's parents, or (b) in the case of divorce, legal separation, or illegitimacy, the custodial parent.

Subd. 7. "Pupil" means any handicapped or nonhandicapped student under 21 years of age eligible to attend a public elementary or secondary school.

Subd. 8. "School" means any school as defined in Minnesota Statutes 1971, Section 120.05, Subdivision 2.

Subd. 9. "School board" means the governing body of any school district or unorganized territory.

Subd. 10. "Suspension" means an action taken by the school administration, under rules promulgated by the school board, prohibiting a pupil from attending school for a period of no more than five school days. This definition does not apply to dismissal from school for one school day or less. Each suspension action shall include a readmission plan. The readmission plan shall include, where appropriate, a provision for alternative programs to be implemented upon readmission. Suspension may not be consecutively imposed against the same pupil for the same course of conduct, or incident of misconduct, except where the pupil will create an immediate and substantial danger to persons or property around him. In no event shall suspension exceed 15 school days, provided that an alternative program shall be implemented to the extent that suspension exceeds five days.

Sec. 3. [127.28] POLICY. No public school shall deny due process or equal protection of the law to any public school pupil involved in a dismissal proceeding which may result in suspension, exclusion, or

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expulsion.

Sec. 4. [127.29] GROUNDS FOR DISMISSAL. Subdivision 1. No school shall dismiss any pupil without attempting to provide alternative programs of education prior to dismissal proceedings. Such programs may include special tutoring, modification of the curriculum for the pupil, placement in a special class or assistance from other agencies.

Subd. 2. A pupil may be dismissed on the following grounds:

(a) Willful violation of any reasonable school board regulation. Such regulation must be clear and definite to provide notice to pupils that they must conform their conduct to its requirements;

(b) Willful conduct which materially and substantially disrupts the rights of others to an education;

(c) Willful conduct which endangers the pupil or other pupils, or the property of the school.

Sec. 5. [127.30] SUSPENSION PROCEDURES. Subdivision 1. No suspension from school shall be imposed without an informal administrative conference with the pupil, except where it appears that the pupil will create an immediate and substantial danger to persons or property around him.

Subd. 2. A written notice containing the grounds for suspension, a brief statement of the facts, a description of the testimony, a readmission plan, and a copy of this act, shall be personally served upon the pupil at or before the time the suspension is to take effect, and upon his parent or guardian by certified mail within 48 hours of the conference. In the event a pupil is suspended without an informal administrative conference on the grounds that the pupil will create an immediate and substantial danger to persons or property around him, the written notice shall be served either personally or by certified mail upon the pupil and his parent or guardian within 48 hours of the suspension. Service by certified mail is complete upon mailing.

Subd. 3. Notwithstanding the provisions of section 5, subdivisions 1 and 2, the pupil may be suspended pending the school board's decision in the expulsion or exclusion hearing; provided that an alternative program shall be implemented to the extent that suspension exceeds five days.

Sec. 6. [127.31] EXCLUSION AND EXPULSION PROCEDURES. Subdivision 1. No exclusion or expulsion shall be imposed without a hearing, unless the right to a hearing is waived in writing by the pupil and parent or guardian. The action shall be initiated by the school board or its agent.

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Subd. 2. Written notice of intent to take action shall:

(a) Be served upon the pupil and his parent or guardian by certified mail;

(b) Contain a complete statement of the facts, a list of the witnesses and a description of their testimony;

(c) State the date, time, and place of the hearing;

(d) Be accompanied by a copy of this act;

(e) Describe alternative educational programs accorded the pupil prior to commencement of the expulsion or exclusion proceedings; and

(f) Inform the pupil and parent or guardian of the right to:

(1) Have legal counsel at the hearing;

(2) Examine the pupil's records before the hearing;

(3) Present evidence; and

(4) Confront and cross-examine witnesses.

Subd. 3. The hearing shall be scheduled within ten days of the service of the written notice unless an extension, not to exceed five days, is requested for good cause by the school board, pupil, parent or guardian.

Subd. 4. The hearing shall be at a time and place reasonably convenient to pupil, parent or guardian.

Subd. 5. The hearing shall be closed unless the pupil, parent or guardian requests an open hearing.

Subd. 6. The pupil shall have a right to a representative of his own choosing, including legal counsel. If a pupil is financially unable to retain counsel, the school board shall advise the pupil's parent or guardian of available legal assistance.

Subd. 7. The hearing shall take place before:

(a) An independent hearing officer;

(b) A member of the school board;

(c) A committee of the school board, or;

(d) The full school board;

as determined by the school board.

Subd. 8. The proceedings of the hearing shall be recorded and preserved, at the expense of the school district, pending ultimate disposition of the action. Testimony shall be given under oath. The hearing officer or a member of the school board shall have the power to issue subpoenas and administer oaths.

Subd. 9. At a reasonable time prior to the hearing, the pupil, parent or guardian, or his representative, shall be given access to all public school system records pertaining to the pupil, including any tests or reports upon which the proposed action may be based.

Subd. 10. The pupil, parent or guardian, or his representative, shall have the right to compel the attendance of any official employee or agent of the public school system or any public employee or any other person who may have evidence upon which the proposed action may be based, and to confront and to cross-examine any witness testifying for the public school system.

Subd. 11. The pupil, parent or guardian, or his representative, shall have the right to present evidence and testimony, including expert psychological or educational testimony.

Subd. 12. The pupil cannot be compelled to testify in the dismissal proceedings.

Subd. 13. The recommendation of the hearing officer or school board member or committee shall be based solely upon substantial evidence presented at the hearing and be made to the school board within two days of the end of the hearing.

Subd. 14. The decision by the school board shall be based upon the recommendation of the hearing officer or school board member or committee and shall be rendered at a special meeting within five days after receipt of the recommendation. The decision shall be in writing and the controlling facts found upon which the decision is made shall be stated in sufficient detail to apprise the parties and the commissioner of education of the basis and reason for the decision.

Sec. 7. [127.32] **APPEAL.** An exclusion or expulsion decision made pursuant to this act may be appealed to the commissioner of education. The commissioner or his representative shall make a final decision based upon a record of evidence presented at the hearing. Such ruling shall be binding upon the parties, subject to judicial review as provided in section 8.

Sec. 8. [127.33] **JUDICIAL REVIEW.** The decision of the commissioner of education made pursuant to this act shall be subject to direct judicial review in the district court of the county in which the school district or any part thereof is located. The scope of the judicial

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review shall be as provided by Minnesota Statutes 1971, Section 15.0425.

Sec. 9. **[127.34] REPORTS TO SERVICE AGENCY.** The school board shall report any action taken pursuant to this act to the appropriate public service agency, when the pupil is under the supervision of such agency.

Sec. 10. **[127.35] NONAPPLICATION OF CERTAIN LAW.** The provisions of Minnesota Statutes 1971, Section 120.10, Subdivision 1, shall not apply to any pupil during a dismissal pursuant to this act.

Sec. 11. **[127.36] REPORT TO COMMISSIONER OF EDUCATION.** The school board shall report each exclusion or expulsion within 30 days of the effective date of the action to the commissioner of education. This report shall include a statement of alternative programs of education accorded the pupil prior to the commencement of exclusion or expulsion proceedings.

Sec. 12. **[127.37] NOTICE OF RIGHT TO BE REINSTATED.** Whenever a pupil fails to return to school within ten school days of the termination of dismissal, the pupil and his parents shall be informed by certified mail of the pupil's right to attend and to be reinstated in the public school.

Sec. 13. **[127.38] POLICIES TO BE ESTABLISHED.** The commissioner of education shall promulgate guidelines to assist each school board. Each school board shall establish uniform criteria for dismissal and adopt policies and rules in writing to effectuate the purposes of this act. The policies will emphasize the prevention of dismissal action through early detection of problems. The policies shall recognize the continuing responsibility of the school for the education of the pupil during the dismissal period and help prepare him for readmission.

Sec. 14. **[127.39] APPLICATION. [Subdivision 1.]** This act shall not be deemed to amend or otherwise affect or change Minnesota Statutes, 1973 Supplement, Section 363.03, Subdivision 5, Clause (2).

Sec. 15. **[Subd. 2.]** This act shall apply only to those portions of the school program for which credit is granted.

Sec. 16. **REPEALER.** Minnesota Statutes 1971, Section 127.071, is repealed.

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