

Joint Guidance ON FEDERAL TITLE IX REGULATIONS

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Joint Guidance on Federal Title IX Regulations: Elementary and Secondary School Hearing Requirements by State

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I. Summary of Regulatory Text

As outlined in the Joint Guidance Memorandum, “[Hearings Optional: Elementary and Secondary Schools](#)” the Final Rule does not require elementary and secondary schools provide a live hearing when responding to formal complaints of sexual harassment as defined in Final Rule Section 106.30(a). And, even where such a school holds a hearing, it need not follow the procedures defined in section 106.45. However, many states have their own requirements for hearings in the K-12 context. Such requirements are summarized in the chart below.

II. Elementary and Secondary Hearing Requirements by State

State	Hearing Requirement		Statute / Reg.	Summary of Requirement	Notes
	Yes	No			
Alabama	X		16-1-24.1(b)	"The Principal shall notify appropriate law enforcement officials when any person violates local board of education policies concerning drugs, alcohol, weapons, physical harm to a person, or threatens physical harm to a person. . . . If that person is a student enrolled in any public school in the state of Alabama, the local school system shall immediately suspend that person from attending regular classes and schedule a hearing at the earliest possible date, which shall not be later than 5 school days."	Hearing requirement appears limited to those violations specifically referenced; 16-1-24.3 requires expulsion policies for students possessing firearms
Alaska		X	4 AAC 06.060(a)	4 AAC 06.060(a): "In a public school, the superintendent or principal may suspend a pupil under the provisions of AS 14.30.045, and the pupil may be reinstated by the superintendent or principal or by the school board." (b) expulsion . . . shall be only upon the action of the governing school board in a district school." 4 AAC 06.060(b): "Expulsion or denial of admission of a pupil shall be only upon the action of the governing school board in a district school."	
Arizona	X		15-843(B)(5) & (F)	15-843(b)(5): "The governing board of any school district . . . Shall prescribe rules for the discipline, suspension and expulsion of pupils. The rules shall be consistent with the constitutional rights of pupils and shall include at least the following . . . (5) a notice and hearing procedure for cases concerning the suspension of a pupil for more than 10 days." 15-843(F): discusses procedure for hearings	

Arkansas	X		ACA 6-18-507(d)(2)(A)	"After hearing all testimony and debate on a suspension, expulsion, or appeal, the board of directors may consider its decision in the executive session."	Arkansas Admin. Code allows teachers and administrators to suspend any student for a maximum of 10 days for a violation, subject to an appeal to the superintendent or board of directors; as such, it appears that a hearing is not given until an appeal
California	X		48918(a)(1)	"The governing board of each school district shall establish rules and regulations governing procedures for the expulsion of pupils. These procedures shall include, but are not necessarily limited to, all of the following: (a)(1) The pupil shall be entitled to a hearing to determine whether the pupil should be expelled . . ."	
Colorado	X		22-33-105(2)(b-c), (3)(c)		
Connecticut	X		10-233c; 10-233d	Suspension: "Unless an emergency exists, no pupil shall be suspended without an informal hearing by the administration, at which such pupil shall be informed of the reasons for the disciplinary action and given an opportunity to explain the situation, provided nothing herein shall be construed to prevent a more formal hearing from being held if the circumstances surrounding the incident so require, and further provided no pupil shall be suspended more than 10 times or a total of 50 days in one school year . . . unless such pupil is granted a form hearing." Expulsion: "Any local or regional board of education . . . may expel . . . any pupils in grades 3-12, inclusive . . . provided a majority of the board members sitting in the expulsion hearing vote to expel."	

Delaware	X		14 Del.C. 616(4), (10.3)	4: students are afforded initial due process rights 10: after those initial due process rights, and following a receipt of recommendation after the Building Level Conference, the Superintendent must notify the student and the parent within 10 days about the expulsion hearing that will be held to consider the recommendation	Law provides robust due process rights.
Florida	X		1006.07(1)(a) / 120.569	Suspension hearings are exempted for Chapter 120 provisions, but expulsion hearings are governed by them.	
Georgia	X		20-2-754(b)	"All parties are afforded an opportunity for a hearing after reasonable notice is served. . . . Hearing is held no later than 10 days after the beginning of the suspension. . . . Opportunity to present and respond to evidence."	
Hawaii		X	8-19-8; 8-19-9		Due process kicks in after 10 days, but it only seems to be a right to appeal, not a right to a hearing.
Idaho	X		33-205	"Within a reasonable period of time following notification, the board of trustees shall grant the pupil and his parents or guardian a full and fair hearing on the proposed expulsion or denial of enrollment. . . . Prior to suspending any student, the superintendent or principal shall grant an informal hearing on the reasons for the suspension and the opportunity to challenge those reasons	
Illinois		X	105 ILCS 5/10-22.6	"To expel pupils guilty of gross disobedience or misconduct . . . Expulsion shall take place only after the parents have been requested to appear at a meeting of the board, or with a hearing officer appointed by it, to discuss their child's behavior. . . . The board . . . at such a meeting shall state the reasons for dismissal and the date on which the expulsion is to become effective . . . detail the specific reasons why. . ."	Nothing in the statute explicitly calls for a hearing.

Indiana	X		IC 20-33-8-19	"An expulsion may take place only after the student and the student's parent or guardian are given notice of their right to appear at an expulsion meeting with the superintendent. . . . If the student or their parents not later than 10 days of receipt of a notice of action makes a written appeal to the governing body, the governing body shall hold a meeting to consider evidence and arguments and take action they deem appropriate."	Suspension may not occur before the principal affords the student an opportunity for a meeting during which the student is entitled to a statement of charges, summary of the evidence, and an opportunity to explain.
Iowa		X	282.4	"A student who commits an assault . . . Shall be suspended for a time to be determined by the principal. Notice of the suspension shall be immediately sent to the president of the board. By special meeting or at the next regularly scheduled board meeting, the board shall review the suspension and decide whether to hold a disciplinary hearing to determine whether or not to order further sanctions against the student, which may include expelling the student."	The only hearing requirement is in reference to assault.
Kansas	X		72-6115(b)(1);(2)	(b)(1): "[N]o suspension for a short term shall be imposed upon a pupil without giving the pupil notice of the charges and affording the pupil an opportunity for a hearing thereon. . . . The hearing may be conducted informally but shall include the following procedural due process requirements (A) The right of the pupil to be present at the hearing; (B) the right of the pupil to be informed of the charges; (C) the right of the pupil to be informed of the basis for the accusation; and (D) the right of the pupil to make statements in defense or mitigation of the charges or accusations." (2) "A short-term suspension may be imposed upon a pupil forthwith, and without affording the pupil a hearing if the presence of the pupil endangers other persons or property or substantially disrupts, impedes or interferes with the operation of the school."	

Kentucky	X		KRS 158.150(6)	"The superintendent, principal, assistant principal, or head teacher of any school may suspend a pupil but shall report the action in writing immediately to the superintendent and to the parent, guardian, or other person having legal custody or control of the pupil. th board of education of any school district may expel any pupil for misconduct as defined in subsection (1) of this section, but the action shall not be taken until the parent, guardian or other person having legal custody or control of the pupil has had an opportunity to have a hearing before the board."	
Louisiana	X		17:416.A(3)(b)(i), (c); 17:416.C(1)	A(3)(c): "Any parent, tutor or legal guardian of a pupil suspended shall have the right to appeal to the city or parish superintendent of school or his designee, who shall conduct a hearing on the merits." C(1): "Upon the recommendation by a principal for the expulsion of any student as authorized by Subsection B hereof, a hearing shall be conducted by the superintendent or by any other person designated so to do by the superintendent to determine the facts of the case and make a finding of whether or not the student is guilty of the conduct warranting an expulsion."	Hearing requirement upon suspension is only available for appeal, but there is a hearing requirement for expulsion.
Maine	X		1001		Indicates due process requirements for expulsion.
Maryland	X		7-305(d)(5); (6)	Procedure for more than 10 day suspension or expulsion . . . (5) if after the conference the county superintendent or the designated representative finds that a suspension of more than 10 school days or expulsion is warranted, the student or the student's parent or guardian may . . . (ii) be heard before the county board . . . (6) unless a public hearing is requested, a hearing shall be held out of the presence of all individuals	Private hearing provided unless public one is requested.

				except those whose presence is considered necessary or desirable.	
Massachusetts	X		Part I, Title 12, Ch. 71, Sec. 37H	(c): "Any student who is charged with a violation of either paragraph (a) or (b) shall be notified in writing of an opportunity for a hearing, provided, however, that the student may have representation, along with the opportunity to present evidence and witnesses at said hearing before the principal."	
Michigan		X	380.1310d	"Before suspending or expelling a pupil . . . The board of a school district or intermediate school district or board of directors of a public school academy, or a superintendent, school principal or designee . . . Shall consider each of the following factors . . . in exercising discretion with regard to suspension for more than 10 days or an expulsion, there is a rebuttable presumption that a suspension or expulsion is not justified unless it can be demonstrated that it considered each of the factors listed.	No hearing requirement, but the board must consider factors such as age, disciplinary history, disability, seriousness of conduct, etc., before expelling or suspending for longer than 10 days. There is also a rebuttable presumption that suspension for longer than 10 days or expulsion is inappropriate.
Minnesota	X		121A.47	"Requiring a hearing; pupils may waive hearing. 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. . . ." Hearing shall be scheduled within 10 days of the service of written notice unless an extension is requested not exceeding 5 days. . . . Hearing shall be closed unless public one is requested. . . Due Process requirements	Suspension requires informal administrative conference before suspension is imposed.

Mississippi	X		37-9-71	"For any suspension of more than 10 days or expulsions, a student shall have the right to a due process hearing, be represented by legal counsel, to present evidence and cross examine witnesses presented by the district."	
Missouri	X		167.161	"The school board of any district, after notice to parents or others having custodial care and a hearing upon charges, may suspend or expel a pupil for good conduct which is prejudicial to good order and discipline in the school or which tends to impair the morale or good conduct of the pupils. . . . At the hearing upon any such removal, suspension, or expulsion, the board shall consider the evidence and statements that the parties present and may consider records of past disciplinary actions, criminal court records or juvenile court records consistent with other provisions of the law, or the actions of the pupil which would constitute a criminal offense."	No pupil shall be suspended unless they were given notice of the charges, and given a chance to explain.
Montana	X		20-5-202	(1): "A pupil may be suspended from school for an initial period not to exceed 10 school days. Upon a finding by a school administrator that the immediate return to school by a pupil would be detrimental to the health, welfare, or safety of others or would be disruptive of the educational process, a pupil may be suspended for one additional period not to exceed 10 school days if the pupil is granted an informal hearing with the school administrator prior to the additional suspension . . ."	No explicit hearing requirements for expulsion.

Nebraska	X		79-264; 79-265; 79-268	<p>79-264(3): "If the superintendent or his or her designee determines that such emergency exclusion shall extend beyond 5 days, the school board shall adopt a procedure for a hearing to be held and a final determination made within 10 school days after the initial date of exclusion..."</p> <p>79-265: Before short-term suspension, a student should be afforded the opportunity to present their version of the facts</p> <p>79-268: "If a principal makes a decision to discipline a student by long-term suspension, expulsion, or mandatory reassignment, the following procedures shall be followed . . . (c) a statement that, before long-term suspension, expulsion or mandatory reassignment for disciplinary purposes can be invoked, the student has a right to a hearing upon request, on the specified charges.</p>	Student must invoke their right to a hearing.
Nevada	X		NRS 392.467(2)	"[N]o pupil may be suspended or expelled until the pupil has been given notice of the charges against him or her, an explanation of the evidence and an opportunity for a hearing, except that a pupil who poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process or who is selling or distributing any controlled substance or is found to be in possession of a dangerous weapon" may be removed from school immediately with a hearing conducted as soon as practicable	
New Hampshire	X		317.04(f)(2) & (3)	<p>"In a long-term suspension of a pupil: (a) written communication to the pupil and at least one of the pupil's parents or guardian . . . Prior to the hearing, of the charges and an explanation of evidence against the pupil; (b) a hearing in accordance with (f)(3)g."</p> <p>(3) gives overview of due process requirements</p>	

New Jersey	X		6A:16-7.2; 7.3	<p>7.2 Short-term: "in each instance of a short-term suspension, a district board of education shall assure the rights of a student suspended for one, not more than 10 consecutive days by providing the following . . . An informal hearing."</p> <p>7.3 Long-term: "in each instance of a long-term suspension, the district board of education shall assure the rights of a student suspended for more than 10 consecutive school days by providing the following . . . a formal hearing before the district board of education that shall, at minimum . . . include the opportunity for students to confront and cross examine and present their own defense."</p>	
New Mexico	X		6.11.2.12(D) & (G)	<p>D: Temporary Suspension - "A student facing temporary suspension shall first be informed of the charges against him or her and, if (s)he denies them, shall be told what evidence supports the charges and given an opportunity to explain."</p> <p>G: Long-Term - "(g) the hearing shall be scheduled no sooner than five nor later than ten school days from the date of receipt of the notice by the parent(s). . . (l) the formal hearing is not a trial. it is an administrative hearing designed to ensure a calm, orderly determination by an impartial hearing authority of the facts of a case of alleged serious misconduct." Lists rules that govern the hearing.</p>	
New York	X		3214(3)(c)(1)	<p>"No pupil may be suspended for a period in excess of five school days unless such pupil and the person in parental relation to such pupil shall have had an opportunity for a fair hearing, upon reasonable notice, at which such pupil shall have the right of representation by counsel, with the right to question witnesses against such pupil and to present witnesses and other evidence on his behalf.</p>	

North Carolina	X		115C-390.6 & 390.8	390.6: Short-term - "[N]o short-term suspension shall be imposed upon a student without first providing the student an opportunity for an informal hearing with the principal." 390.80: Long-term - "[N]o longer-term suspension shall be imposed on a student until an opportunity for a formal hearing is provided to the student. If a hearing is timely requested, it shall be held and a decision issued before a long-term suspension is imposed . . . if no hearing is timely requested, the superintendent shall follow the procedures described in G.S. 115C-390.7(c)"	
North Dakota	X		15.1-19-09(1)	"The rules for expulsion must provide for a procedural due process hearing in the manner provided for in subsection 2 of section 15.1-19-10, before determination to expel a student is made.	
Ohio	X		ORC 3313.66(A)(1)(a) and (b); ORC 3313.66(D),	"No pupil shall be issued an out-of-school suspension unless prior to the suspension the superintendent or principal does both of the following... (a) Gives the pupil written notice of the intention to suspend... (b) Provides the pupil an opportunity to appear at an informal hearing..."; "a hearing before the board or its designee in order to be heard against the suspension or expulsion..."	
Oklahoma		X	70 O.S. 24-101.3	"Students suspended out-of-school for more than 10 days and students suspended pursuant to the provisions of paragraph 2 of subsection C of this section may request a review of the suspension with the administration of the district. . . . Upon full investigation of the matter, the board shall determine the guilt or innocence of the student and the reasonableness of the term of the out-of-school suspension. a board of education may conduct the hearing and render the final decision."	There seems to be only a right to appeal a decision, not a hearing before it is imposed.

Oregon	X		581-021-0065 & 0070	0065: Suspension - student must be afforded notice and an opportunity to present their side of the facts 0070: Expulsion - students may not be expelled without a hearing unless the student's parents or guardian, or the student over 18, waives their right to a hearing. Expulsion hearings must be conducted pursuant to ORS 332.061.	
Pennsylvania	X		22 Pa Code 12.8	"Education is a statutory right, and students shall be afforded due process if they are to be excluded from school. . . . A formal hearing is required in all expulsion actions" and due process requirements should be followed.	
Rhode Island		X	16-2-17	(c): "A student suspended under this section may appeal the action of the school committee, or a school principal as designee, to the commissioner of elementary and secondary education who, after notice to the parties interested of the time and place of hearing, shall examine and decide the appeal without cost to the parties involved."	No explicit hearing requirement; hearings only seem to be invoked upon appeal.
South Carolina	X		59-63-240	"If procedures for expulsion are initiated, the parents or legal guardian of the pupil shall be notified in writing of the time and the place of a hearing either before the board or a person or committee designated by the board. At the hearing the parents or legal guardian shall have the right to legal counsel and to all other regular legal rights including the right to question all witnesses."	

South Dakota		X	13-32-4	"The South Dakota Board of Education shall promulgate rules to establish administrative due process procedures for the protection of a student's rights. The administrative due process procedures shall include a requirement that the school give notice of a student's due process rights to the parent or guardian of the student at the time of suspension or expulsion. Each school district shall prove a procedural due process hearing, if requested, for a student in accordance with such rules if the suspension or expulsion of the student extends into the 11th school day."	The student must request the hearing.
Tennessee		X	49-6-3401	If it is deemed that the offense requires a suspension for longer than 10 days, the principal must give notice to the parent or guardian and the student of the right to appeal the decision	It appears that the right to a hearing is only upon appeal of the decision.
Texas	X		37.009(f)	"Before a student may be expelled under Section 37.007, the board or the board's designee must prove the student a hearing at which the student is afforded the appropriate due process as required by the federal constitution and which the student's parent or guardian is invited, in writing, to attend. At the hearing, the student is entitled to be represented by the student's parent or guardian or another adult who can provide guidance to the student and who is not an employee of the district."	
Utah		X	53G-8-206(c)	"A suspension may not extend beyond 10 school days unless the student and the student's parent or guardian have been given a reasonable opportunity to meet with a designated school official and respond to the allegations and proposed disciplinary action."	Nothing in the law explicitly calls for a hearing.

Vermont	X		22 000 009.4311	"When a student is subject to disciplinary action, the school district shall afford the student due process procedures as follows . . . In cases of a long term suspension which is generally more than 10 days unless a school district establishes a shorter period, the student and their parent/guardian shall be given an opportunity for a formal hearing before the school board."	Along with providing for a hearing, the regulation also grants an informal hearing for suspensions less than 10 days.
Virginia		X	22.1-277.06	"Pupils may be expelled from attendance at school after written notice to the pupil and his parents of the proposed action and the reasons therefore and of the right to a hearing before the school board or a committee thereof in accordance with regulations of the school board." n	Student has to exercise their right to a hearing.
Washington		X	WAC 391-400-450; 392-400-455; 392-400-460	There is an initial hearing before administering suspension or expulsion where the principal or designee for the purpose of hearing the student's perspective; then there must be a notice sent to the parent; and then the student or parent can request a conference	Student has to exercise their right to a hearing.
West Virginia	X		18A-5-1a(f)	"The county board shall hold the scheduled hearing to determine if the student should be reinstated [from suspension] or expelled from school."	Along with the right to a hearing before expulsion, there is also a right to an informal hearing before suspension.
Wisconsin	X		119.25(2)(a)	"During any school year in which a resolution adopted under sub.(1) is effective, the independent hearing officer or independent hearing panel appointed by the board: (1) may expel a pupil from school whenever the hearing officer or panel finds that the pupil engaged in conduct that constitutes grounds for expulsion."	

Wyoming	X		21-4-305(d)	"the board of trustees of any school district or the superintendent if designated, may suspend a student for a period exceeding 10 days or may expel a student for a period not to exceed one year provided that the student is afforded an opportunity for a hearing in accordance with the procedures of the Wyoming Administrative Procedure Act."	
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