

MEMORANDUM OF UNDERSTANDING

It is the intention of the local Police Department and the Sunapee School District to work in a joint cooperative effort to provide a safe and healthy school environment for the students, staff and visitors. We intend to do this in compliance with New Hampshire RSA 193-D, Safe School Zones, as amended.

Communication and sharing of information is the initiation of any cooperative effort. As required by law, it is agreed that every school employee who has witnessed, or who has information from a victim of an act of theft, destruction, or violence in a safe school zone shall report such act in writing immediately to a supervisor. A supervisor receiving such report shall immediately forward such information to the school principal who shall file it with the local law enforcement authority. Such report shall be made by the principal to the local law enforcement authority immediately, by telephone or otherwise, and shall be followed within 48 hours by a report in writing.

As a result of New Hampshire RSA 193-D:7, school employees are relieved of concerns regarding confidentiality. It states:

Notwithstanding any other provision of law, it shall be permissible for any law enforcement officer and any school administrator to exchange information relating only to acts of theft, destruction, or violence in a safe school zone regarding the identity of any juvenile, police records relating to a juvenile, or other relevant information when such information reasonably relates to delinquency or criminal conduct, suspected delinquency or suspected criminal conduct, or any conduct which would classify a pupil as a child in need of services under RSA 169-D or a child in need of protection under RSA 169-C.

The report required above shall include: (Blank forms are supplied)

- (A) Identification of the act of theft, destruction, or violence as defined in RSA 193-D:1 that was allegedly committed.
- (B) The name and address, if known, of any witness to the act of theft, destruction, or violence in a safe school zone.
- (C) The name and home address, if known, of any person suspected of committing an act of theft, destruction, or violence in a safe school zone.

The written report required above shall be waived by law enforcement officials when there is a law enforcement response at the time of the incident which results in a written police report.

“Acts of theft, destruction or violence” means acts set forth in the following, regardless of the age of the perpetrator and shall be reported as required above:

- (A) Homicide under RSA 630. Any death shall be immediately reported to law enforcement officials, regardless of suspected case.
- (B) Any first or second degree assault under RSA 631. This will include any injury to a person caused by another person. Investigation may reveal that not all of these incidents constitute an actual crime. Reporting will allow an investigation to be conducted.
- (C) Any felonious or aggravated felonious sexual assault under RSA 632-A. Although going beyond the legal requirement, all acts of sexual penetration occurring within safe school zones will be reported.
- (D) Unlawful possession or sale of a firearm or other dangerous weapon under RSA 159. Due to the tremendous potential for serious injury or death when firearms are present, any person in possession of a firearm within Safe School Zones will be reported. The exception will be recognized Law enforcement Personnel. Some of those reported may not be in violation of the law, but should be reported.
- (E) Arson under RSA 634:1. Any person who knowingly starts any fire or causes any explosion which results in injury, damage to the property or another, or is done with intentional disregard for the safety of others, is included in this section.
- (F) Burglary under RSA 635. Any person who enters a building, or separately secured section of a building, with a purpose to commit a crime inside.
- (G) Robbery under RSA 636. Any theft that is accomplished by the use of physical force or the threat of imminent use of force.
- (H) Illegal sale or possession of a controlled drug under RSA 318-B. Although going beyond the legal requirement, reports will be made on any substance, other than food, that affects the way your mind and body work, excepting legally prescribed medications, which should be recorded with the appropriate administrative school personnel.

Additionally, an act of theft, destruction or violence may mean the items set forth below when, in the opinion of the reporting individual, it is of serious proportion:

- (A) Simple assault under RSA 631:2-a. Simple assaults may result in some injuries. Simple assaults also include knowingly having unprivileged physical contact with another person. Recognize that this can be very minor contact and the principals will consider the District Disciplinary Policy when making a determination about whether or not to file a Safe School Zone Offense Report. We agree to err in the direction of filing a report when there is any question. Law enforcement and school officials can then jointly determine the best action to be taken.
- (B) Criminal mischief under RSA 634:2. This includes purposely or recklessly damaging the property of another. This includes school property.
- (C) Theft under RSA 637. This is the obtaining or exercising of unauthorized control over the property of another.

The following terms, as defined in RSA 193-D:1 apply to this Memorandum:

“Safe School Zone” means an area inclusive of any school property or school buses.

“School” means any public or private elementary, secondary, or secondary vocational-technical school in New Hampshire. It shall not include home schools under RSA 193-A.

“School Employee” means any school administrator, teacher, or other employee of any public or private school, school district, school department, or school administrative unit, or any person providing or performing continuing contact services for any public or private school, school district, school department or school administrative unit.

“School Property” means all real property, physical plan and equipment used for school purposes, including but not limited to school playgrounds and buses, whether public or private.

“School Purposes” means school-sponsored programs, including but not limited to educational or extra-curricular activities.

Nothing contained in this memorandum is intended to limit the events that may be reported to the police department or to limit school employees from requesting police assistance on matters not referred to in this memorandum.

The local police department and the Sunapee School District agree to provide their employees with training relative to this Memorandum of Understanding, its purpose and anticipated results. The parties further agree to maintain regular and open communication to evaluate the effect of this memorandum and suggest improvements and adjustments that may be necessary.

ADMINISTRATIVE PROCEDURE TO ACCOMPANY POLICY JICD
STUDENT CONDUCT, DISCIPLINE, AND DUE PROCESS

The Sunapee School District rules relative to student conduct, discipline and due process in the schools are adapted from the Rules of the New Hampshire State Board of Education. See Part ED 317. The purpose of the State Board Rules is set forth as follows:

4. Purpose

- a. These rules provide due process and statewide uniformity in the enforcement of RSA 193-D relative to disciplinary action for misconduct by a pupil in a safe school zone, including possessing a firearm or any other dangerous weapon, and RSA 193:13 relative to suspension and expulsion of pupils.
- b. Since RSA 193-D:2, II, provides that school boards may adopt policies relative to pupil conduct and disciplinary procedures, these rules also provide a standard so that the policies of school boards are consistent throughout the State.
- c. These rules also link discipline and due process in safe school zones to the requirements of ED 1109 relative to special needs students.

5. Definitions

- a. "Expulsion" means the permanent denial of a pupil's attendance at school for any of the reasons listed in RSA 193:13, II and III.
- b. "Weapon" means (1) a firearm [see 18 USC Section 921], to include a pellet or BB gun; (2) any object prohibited, licensed, or regulated under RSA 159; (3) a knife and/or other substance or object which, in the manner it is used, intended to be used, or threatened to be used, is known to be capable of producing serious injury.
- c. "Gross misconduct" means an act or acts which: (1) results in violence to another person or property; or (2) poses a direct threat to the safety of others in a safe school zone; or (3) is identified in RSA 193-D:1; or (4) involves repeated instances of misconduct or inappropriate behavior for which the pupil has been previously warned or disciplined.
- d. "Neglect" in the context of RSA 193:13.I and II, means the failure of a pupil to pay attention to an announced, posted, or printed school rule.

- e. “Possession” shall include, but not be limited to, having control over a weapon during any part of a school day or during any part of a school-related activity, including transporting the weapon to school or to a school-related activity and storage of the weapon anywhere on school premises, whether in the student’s locker or in another student’s locker or in any other place on school premises. Possession is also deemed to include doing any other act whereby the actor knowingly contributes to causing a weapon to be on school premises or contributes to causing use of a weapon on school premises.
- f. “Pupil” means a child through age 21 in attendance at the school during the school day. (If the pupil is age 18 or older and not under guardianship, the written notices required below to issue to a parent shall issue instead only to the pupil and, further, all consents or decisions required in the suspension or expulsion process will issue from the pupil.)
- g. “Refusal”, in the context of RSA 193:13, I and II, means the defiance of a pupil to comply with an announced, posted or printed school rule.
- h. “Safe school zone” means safe school zone as defined in RSA 193-D: I, II.
- i. “School day” shall include not only the instructional portion of the day, but may also include travel to and from school or a school-related activity, as well as the time spent as a participant or spectator at a school-related activity.
- j. “School premises” shall include the school and surrounding school property, including, without limitation, parking areas, athletic fields and playgrounds; school busses or other vehicle furnished by the District or its agents for transportation to or from school or a school-related activity; school bus stops; and/or those premises and surroundings being used for a school-related activity. For purposes of this procedure and without intending to interfere with the rights and duties of the police and/or private property owners, school premises shall also be deemed to include streets and exterior property in the school neighborhood during the course of travel to and from school or a school-related activity.
- k. “Superintendent” means the school superintendent or, in the absence of the superintendent, the assistant superintendent for the district(s) or town(s).
- l. “Suspension” means the temporary denial of a student’s attendance at school for a specific period of time for gross misconduct or for neglect or refusal to conform to announced, posted, or printed school rules.

- m. “Day”, with respect to the number of days, shall refer to school days unless there is specific reference to “calendar” days.

6. Standard for Expulsion by the Sunapee School District

- a. If the School Board expels a pupil under RSA 193:13, II or III, it shall state in writing the act or acts leading to expulsion and the specific statutory reference prohibiting that act or acts as set forth in RSA 193:13 and/or RSA 193-D; and shall provide notice that the expulsion may be reviewed prior to the start of each school year in accordance with Appendix A.
- b. The principal of each school shall make certain that the pupil has received notice of the requirements of RSA 193:13 and RSA 193-D:1 through announced, posted or printed school rules. The statutory text shall be printed in the school handbook to be distributed to each student at the beginning of the school year and shall be announced, posted and printed at other appropriate locations and times in the Middle School and High School. Nothing herein shall prevent a school principal from printing, posting and/or announcing other rules applicable to the school.
- c. If the student is subject to expulsion and a weapon is involved, the responsibility shall be upon the Superintendent to contact local law enforcement officials whenever there is any issue concerning:
 - 1. whether a firearm is legally licensed under RSA 159; or
 - 2. whether a firearm is lawfully possessed, as opposed to unlawfully possessed, under the legal definitions of RSA 159.
- d. If a pupil brings or possesses a weapon in a safe school zone without written authorization from the Superintendent, the following shall apply:

The pupil shall be suspended for a period of not less than 10 days and, if the weapon is determined to be a firearm as defined in 18 USC Section 921, the School Board shall hold a hearing within 10 days to determine whether the student was in violation of RSA 193:13, III, and, therefore, is subject to expulsion for a period of not less than 12 months, and whether the student’s expulsion will be modified under policies set forth in Appendix B.

7. Disciplinary Procedures

There shall be the following levels of discipline available to school officials enforcing

RSA 193:13 and/or RSA 193-D relative to the suspension and expulsion of pupils.

1. *A short term suspension* (not to exceed 10 days). The Board hereby designates that the Superintendent, the Assistant Superintendent for the school district(s) and town(s), and each principal and assistant principal shall have authority to suspend a pupil for 10 days or less.
2. A long term suspension (between 11 and 20 days). Following a hearing, the Superintendent, the Assistant Superintendent for the school district(s) and town(s), and each principal shall have authority to extend a short-term suspension to 20 days. This hearing shall be conducted and the decision shall be issued by a different administrator than the administrator who suspended the pupil for the first ten days.
3. An expulsion by the School Board whereby conditions are established for reinstatement. See also Appendix A relative to review of an expulsion prior to the start of any school year.
4. An indefinite expulsion by the School Board whereby no conditions are established for reinstatement. However, see Appendix A relative to review of an expulsion prior to the start of any school year.

Due process in disciplinary proceedings shall include, at a minimum, the following:

1. *In short term suspension:*
 - (a) The pupil shall be informed of the purpose of the meeting.
 - (b) At or before the meeting, oral and/or written notice of the charges and an oral and/or written explanation of the evidence against the pupil shall be provided to the pupil.
 - (c) The pupil shall be provided an opportunity to present his/her side of the story.
 - (d) Following the meeting, a written statement shall issue to the pupil and at least one of the pupil's parents or guardians, delivered in person or by mail to the pupil's last known address, including an explanation of the charges, the evidence, the findings, any recommendation for additional suspension or expulsion, and a recommendation for student action to correct the discipline problem.

2. In *long-term suspension of a pupil*:
 - (a) The written statement issued under Section IV(b)(1)(d) shall establish a date for a hearing. The hearing will not generally be postponed if the postponement would interrupt the continuity of a short-term suspension into a long-term suspension.
 - (b) A hearing in accordance with the procedures set forth below in Section IV(b)(3)(f).
 - (c) A written decision which includes the legal and factual basis for the conclusion that the pupil should be suspended for an additional 10 days or less.
 - (d) Within 10 calendar days of the decision, this decision may be appealed to the School Board under RSA 193:13, I. The Board may or may not stay the suspension while the appeal is pending. The Board reserves the right to issue a decision without hearing any evidence or all proffered evidence, but may instead rely upon the record as it has been developed during the suspension process.
3. In the expulsion by the School Board, due process shall include the following minimal requirements:
 - (a) A formal hearing shall be held before any expulsion;
 - (b) Such hearing may be held either before or after the short-term suspension has expired;
 - (c) If the hearing is held after the expiration of a short-term suspension, the pupil shall be entitled to return to school after the short-term suspension has expired, pending the expulsion hearing. The School Board reserves the right to deny a request for postponement of a scheduled hearing if the request for postponement is objected to by either the pupil or the administrator recommending expulsion.
 - (d) The written statement issued under Section IV(b)(1)(d) shall establish a date for the expulsion hearing and shall also include a complete description of the process used by administration to reach its recommendation that the student should be expelled.

- (e) This notice shall be delivered to the pupil and at least one of the pupil's parents or guardians at least 5 calendar days prior to the hearing.
 - (f) The following hearing procedures shall apply:
 - (1) The pupil, together with a parent or guardian, may waive the right to a hearing and accept the findings.
 - (2) Formal rules of evidence shall not be applicable; however, school officials shall present evidence in support of the charge(s) and the accused pupil or his/her parent or guardian shall have an opportunity to present any defense or reply;
 - (3) The hearing shall be either public or private and the choice shall be that of the pupil or his parent or guardian. Provided, nevertheless, that if the nature of the evidence will violate the privacy of other students or if the Board determines that substantial harm to the pupil could result from an ill-conceived decision to hold the hearing in public, then the Board reserves the right and obligation to insist upon a private hearing;
 - (4) During the hearing, the pupil, parent, guardian, or counsel representing the pupil, shall have the right to examine any and all witnesses.
 - (g) The decision of the School Board shall be based on a dispassionate and fair consideration of substantial evidence that the accused pupil committed the act or acts for which expulsion is to be imposed and that such acts are, in fact, a proper reason for expulsion;
 - (h) The decision shall state whether the student is expelled; a statement of the time period for which the student is expelled; and any action the student may take to be restored by the Board.
 - (i) If the decision is to expel the pupil, the decision shall include the legal and factual basis for the decision and,
4. A decision shall include a statement that the pupil has the right to appeal the decision of the State Board of Education.

5. All appeals to the State Board allowed under RSA 193:13, II or III, shall be filed within 20 calendar days of receipt of the written decision of the School Board and shall be in accordance with RSA 541-A and ED 200.
8. Reporting Procedures
 - A. In accordance with RSA 193-D:4, each written report by a supervisor to the principal relating to an act of theft, destruction, or violence in a safe school zone shall be on standardized New Hampshire Board of Education Form #Ed 317.
 - B. The report by a supervisor to a principal on Form #Ed 317 shall contain all the statutory information required by RSA 193-D:4.
 - C. Form #Ed 317 shall be completed and filed with the Commissioner of Education on or before June 30 of each year.
 - D. Form #Ed 317 shall contain the following information:
 1. School name.
 2. School address.
 3. School telephone number.
 4. Name of School Principal.
 5. Date of incident involving an act of theft, destruction, or violence, or the possession of a firearm.
 6. Time of incident in (5) above.
 7. Location of incident in (5) above.
 8. Alleged offense.
 9. Description of incident.
 10. Name of suspect.
 11. Grade in school of suspect.
 12. Address of suspect.
 13. Gender of suspect.
 14. Name of victim.
 15. Grade in school of victim.
 16. Address of victim.
 17. Gender of victim.
 18. Name of employee reporting incident.

19. Date report was completed by employee.
20. Date report was filed with law enforcement authority by school principal.

9. Discipline of Students with an Educational Disability

The district shall comply with the provisions of the Individual With Disabilities Education Act (IDEA) when disciplining students. No special education student shall be expelled if the student's particular act of gross disobedience/misconduct is a manifestation of his or her disability. Any special education student whose gross disobedience/misconduct is not a manifestation of his or her disability may be expelled pursuant to the expulsion procedures, except that such disabled student shall continue to receive educational services as provided in the IDEA during such period of expulsion. A special education student may be suspended for an aggregate of 10 days of school per school year, regardless of whether the student's gross disobedience/misconduct is a manifestation of his or her disabling condition without the need for the district to provide any educational services. A special education student may be suspended for additional removals of up to ten days for separate acts of misconduct, as long as the removals do not constitute a pattern. During such subsequent suspensions for ten school days or less, the district must provide services to the student with disabilities to the extent determined necessary to enable the student to appropriately advance in the general curriculum and toward achieving his/her IEP goals. School administrators and the special education teacher will determine the services needed. The IEP team (PPT) will decide the level of services to be provided to a student with disabilities who is expelled for behavior unrelated to his/her disability.

Any special education student may be temporarily excluded to an appropriate alternative educational setting for no more than 45 days by court order or by order of a duly appointed hearing officer if the district demonstrates that maintaining the student in his/her current placement is substantially likely to result in injury to the student or others.

A special education student who has carried a weapon to school or to a school function or who knowingly possesses or used illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function may be removed from his/her current placement. Such a student shall be placed in an appropriate interim alternative educational setting for no more than 45 days in accordance with IDEA.

ADMINISTRATIVE PROCEDURE TO ACCOMPANY POLICY JICD-R**APPENDIX A**

An expelled pupil has the right to request a review of the expulsion prior to the start of each school year.

A request for review should be directed by the pupil to the Superintendent of Schools and should be received by the Superintendent on or before August 15. The request shall set forth each and all reasons why the pupil's right to attend school should be reinstated. Of particular importance would necessarily be such information as might convince school authorities that the conduct which led to the expulsion would not be repeated.

The Superintendent of Schools or Assistant Superintendent and the principal or an assistant principal at the applicable school shall direct written recommendation to the Board with a copy to the pupil.

The expulsion may be continued: the pupil may be reinstated without conditions; or the pupil may be required to meet certain conditions prior to reinstatement. A code of conduct and consequences may be established for a reinstated pupil which are more strict than for the general student population.

ADMINISTRATIVE PROCEDURE TO ACCOMPANY POLICY JICD-R**APPENDIX B**

The mandatory 12-month expulsion from school for bringing or possessing a firearm in a safe school zone may be modified on a case-by-case basis in the sole discretion of the Superintendent of Schools in the following situations:

1. The Superintendent determines that possession of the firearm was inadvertent in that another person had left the firearm in the pupil's vehicle; and the pupil had not noticed that s/he was bringing the firearm within the safe school zone; or
2. The Superintendent determines that the pupil intended to use the firearm for sport immediately before or after school and had no intention to display the firearm to other students.
3. The pupil is in the fifth grade or lower grade and the Superintendent determines that the pupil did not properly understand the dangers of firearms when the firearm was brought to school.

4. The Superintendent determines that the firearm was not loaded; and that no ammunition was reasonably available; and that the pupil had no intention to display the firearm to other students.

Reference Policies: IHBA and JICD