

## ARTICLE 3.

### DISCIPLINE

**SECTION 59-63-210.** Grounds for which trustees may expel, suspend, or transfer pupils; petition for readmission; expulsion, suspension, or transfer.

(A) Any district board of trustees may authorize or order the expulsion, suspension, or transfer of any pupil for the commission of any crime, gross immorality, gross misbehavior, persistent disobedience, or for violation of written rules and promulgated regulations established by the district board, county board, or the State Board of Education, or when the presence of the pupil is detrimental to the best interest of the school. Each expelled pupil has the right to petition for readmission for the succeeding school year. Expulsion or suspension must be construed to prohibit a pupil from entering the school or school grounds, except for a prearranged conference with an administrator, attending any day or night school functions, or riding a school bus. The provisions of this section do not preclude enrollment and attendance in any adult or night school.

(B) A district board of trustees shall not authorize or order the expulsion, suspension, or transfer of any pupil for a violation of Section 59-150-250(B).

#### CREDIT(S)

HISTORY: 1962 Code Section 21-771; 1973 (58) 407; 2001 Act No. 59, Section 8.

#### CROSS REFERENCES

Disciplinary powers of school bus drivers, see Section 59-67-240.

Powers and duties of school trustees, generally, see Section 59-19-90.

Procedures for expulsion for the remainder of the school year, see Section 59-63-240.

#### LIBRARY REFERENCES

Schools 177.

Westlaw Key Number Search: 345k177.

C.J.S. Schools and School Districts Sections 798 to 802.

#### ATTORNEY GENERAL'S OPINIONS

Attorney General's office respectfully declines to issue opinion as to whether Education for All Handicapped Children Act (20 USCA Sections 1401 et seq.) requires state plans to provide education to handicapped children expelled from school for reasons unrelated to handicaps; however, state law does not appear to prohibit State Board from requiring, by regulation, that education be provided for such students if education is undertaken in adult school, night school, or in setting other than school grounds; such would be matter of policy for Board, and Office makes no comment concerning policy considerations. 1990 Op Atty Gen No. 90-64.

Permanent expulsion of a student for "incurable" behavior may be based on one serious offense which threatens the safety and order of the school, pupils and personnel; carrying a pistol or a knife or another lethal weapon, dealing drugs, or committing a sexual assault on school grounds are cause for permanent expulsion; an offending student must be afforded fair proceedings to determine if the misconduct occurred and the ultimate determination lies with the school board. 1989 Op Atty Gen, No. 89-66, p 168.

#### NOTES OF DECISIONS

In general 1

1. In general

Students suspended for three days for vandalizing another school received all the process due in a temporary student suspension when they received notice, an explanation, and an opportunity to respond. *Floyd v. Horry County School Dist.* (S.C. 2002) 351 S.C. 233, 569 S.E.2d 343. Constitutional Law 4212(2); Education 754

**SECTION 59-63-217.** Barring enrollment of student; grounds; notice and hearing; duration of bar.

(A) In determining whether or not a student meets the standards of conduct and behavior promulgated by the board of trustees necessary for first time enrollment and attendance in a school in the district, the board shall consider nonschool records, the student's disciplinary records in any school in which the student was previously enrolled as these records relate to the adjudication of delinquency in any jurisdiction, within or without this State, of violations or activities which constitute violent crimes under Section 16-1-60, adjudications for assault and battery of a high and aggravated nature, the unlawful use or possession of weapons, or the unlawful sale of drugs whether or not considered to be drug trafficking. Based on this consideration of the student's record, the board may bar his enrollment in the schools of the district.

(B) If the board bars a student from enrolling pursuant to this section, notice must be provided to the student's parent or legal guardian and the student is entitled to a hearing and all other procedural rights afforded under state law to a student subject to expulsion.

(C) The bar to enrollment allowed by this section applies for a maximum of one year. After the bar is lifted, a student may reapply for enrollment and the board shall order the student enrolled if he otherwise meets enrollment criteria.

CREDIT(S)

HISTORY: 1992 Act No. 506, Section 1; 1993 Act No. 117, Section 2.

EDITOR'S NOTE

2010 Act No. 273, Section 7.C, provides:

"Wherever in the 1976 Code of Laws reference is made to the common law offense of assault and battery of a high and aggravated nature, it means assault and battery with intent to kill, as contained in repealed Section 16-3-620, and, except for references in Section 16-1-60 and Section 17-25-45, wherever in the 1976 Code reference is made to assault and battery with intent to kill, it means attempted murder as defined in Section 16-3-29."

LIBRARY REFERENCES

Schools 154(1).

C.J.S. Schools and School Districts Sections 713 to 715.

C.J.S. Civil Rights Sections 127, 130.

Westlaw Key Number Search: 345k154(1).

**SECTION 59-63-220.** Suspension of pupils by administrator.

Any district board may confer upon any administrator the authority to suspend a pupil from a teacher's class or from the school not in excess of ten days for any one offense and for not more than thirty days in any one school year but no such administrator may suspend a pupil from school during the last ten days of a year if the suspension will make the pupil ineligible to receive credit for the school year without the approval of the school board unless the presence of the pupil constitutes an actual threat to a class or a school or a hearing is granted within twenty-four hours of the suspension.

CREDIT(S)

HISTORY: 1962 Code Section 21-772; 1973 (58) 407.

#### LIBRARY REFERENCES

Schools 177.

Westlaw Key Number Search: 345k177.

C.J.S. Schools and School Districts Sections 798 to 802.

#### ATTORNEY GENERAL'S OPINIONS

The school district superintendent may be appointed to conduct disciplinary hearings as the Board's designee pursuant to Sections 59-63-220 and 59-63-240. 1994 Op Atty Gen, No. 94-51, p. 115.

**SECTION 59-63-230.** Notices of suspensions; conferences with parents or guardian.

When a pupil is suspended from a class or a school, the administrator shall notify, in writing, the parents or legal guardian of the pupil, giving the reason for such suspension and setting a time and place when the administrator shall be available for a conference with the parents or guardian. The conference shall be set within three days of the date of the suspension. After the conference the parents or legal guardian may appeal the suspension to the board of trustees or to its authorized agent.

#### CREDIT(S)

HISTORY: 1962 Code Section 21-773; 1973 (58) 407.

#### CROSS REFERENCES

School district's requiring adult, who seeks to enroll a child who resides with the adult, to accept responsibility for receiving notices of discipline pursuant to this section, see Section 59-63-32.

#### LIBRARY REFERENCES

Schools 177.

Westlaw Key Number Search: 345k177.

C.J.S. Schools and School Districts Sections 798 to 802.

#### NOTES OF DECISIONS

In general 1

1. In general

The Circuit Court did not have jurisdiction over an action by a student contesting his suspension from high school; a comparison of the statute pertaining to suspension with the statute dealing with that dealing with expulsions shows that the Legislature intended that suspended students not be entitled to a right to appeal beyond "the board of trustees or. .. its authorized agent". *Byrd v. Irmo High School* (S.C. 1996) 321 S.C. 426, 468 S.E.2d 861, rehearing denied.

**SECTION 59-63-235.** Expulsion of student determined to have brought firearm to school.

The district board must expel for no less than one year a student who is determined to have brought a firearm to a school or any setting under the jurisdiction of a local board of trustees. The expulsion must follow the procedures established pursuant to Section 59-63-240. The one-year expulsion is subject to modification by the district superintendent of education on a case-by-case basis. Students expelled pursuant to this section are not precluded from receiving educational services in an alternative setting. Each local board of trustees is to establish a policy which requires the student to be referred to the local county office of the Department of Juvenile Justice or its representative.

#### CREDIT(S)

**HISTORY:** 1995 Act No. 39, Section 1.

**LIBRARY REFERENCES**

Schools 177.

Westlaw Key Number Search: 345k177.

C.J.S. Schools and School Districts Sections 798 to 802.

**SECTION 59-63-240.** Expulsion for remainder of year; hearings.

The board may expel for the remainder of the school year a pupil for any of the reasons listed in Section 59-63-210. 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. If the hearing is held by any authority other than the board of trustees, the right to appeal the decision to the board is reserved to either party. The hearing shall take place within fifteen days of the written notification at a time and place designated by the board and a decision shall be rendered within ten days of the hearing. The pupil may be suspended from school and all school activities during the time of the expulsion procedures. The action of the board may be appealed to the proper court. The board may permanently expel any incorrigible pupil.

**CREDIT(S)**

**HISTORY:** 1962 Code Section 21-774; 1973 (58) 407.

**CROSS REFERENCES**

School district's requiring adult, who seeks to enroll a child who resides with the adult, to accept responsibility for receiving notices of discipline pursuant to this section, see Section 59-63-32.

**LIBRARY REFERENCES**

Schools 177.

Westlaw Key Number Search: 345k177.

C.J.S. Schools and School Districts Sections 798 to 802.

**ATTORNEY GENERAL'S OPINIONS**

Permanent expulsion of a student for "incorrigible" behavior may be based on one serious offense which threatens the safety and order of the school, pupils and personnel; carrying a pistol or a knife or another lethal weapon, dealing drugs, or committing a sexual assault on school grounds are cause for permanent expulsion; an offending student must be afforded fair proceedings to determine if the misconduct occurred and the ultimate determination lies with the school board. 1989 Op Atty Gen, No. 89-66, p 168.

The school district superintendent may be appointed to conduct disciplinary hearings as the Board's designee pursuant to Sections 59-63-220 and 59-63-240. 1994 Op Atty Gen, No. 94-51, p. 115.

The state cannot constitutionally require that a student waive his or her due process right to an opportunity to be heard in the event of expulsion as to any disciplinary problems in the future in order to be given a second chance to avoid expulsion for an earlier matter. 1994 Op Atty Gen, No. 94-66, p. 142.

**NOTES OF DECISIONS**

In general 1

Due process 1.5

Review 3

Sufficiency of evidence 2

1. In general

Students' reinstatement to school pending an appeal of the school board's expulsion order was effectively prohibited by statute, providing that a student who has been recommended for expulsion may be suspended from school and all school activities during the time of the expulsion procedures, and under these circumstances, a direct appeal would likely have been futile, and thus, students did not have to exhaust administrative remedies since it would be futile to do so. *Stinney v. Sumter School Dist. 17* (S.C.App. 2009) 382 S.C. 352, 675 S.E.2d 760, rehearing denied, certiorari granted, reversed 391 S.C. 547, 707 S.E.2d 397. Education 758

Statute allowing school board's decision to suspend or expel student to be appealed to a court did not apply in disciplinary proceeding once hearing officer rejected expulsion and imposed sanction of transfer to alternative school, and thus student's right to appeal hearing officer's decision ended with school board. *Davis v. School Dist. of Greenville County* (S.C. 2007) 374 S.C. 39, 647 S.E.2d 219. Education 758

The Circuit Court did not have jurisdiction over an action by a student contesting his suspension from high school; a comparison of the statute pertaining to suspension with the statute dealing with that dealing with expulsions shows that the Legislature intended that suspended students not be entitled to a right to appeal beyond "the board of trustees or. . . its authorized agent". *Byrd v. Irmo High School* (S.C. 1996) 321 S.C. 426, 468 S.E.2d 861, rehearing denied.

#### 1.5. Due process

High school students, who were expelled from school after fighting with other students, and their parents were afforded due process during expulsion process, pursuant to statute governing expulsion, as students and their parents were provided with notice, opportunity to be heard, right to be represented by counsel, and right to present evidence and question witnesses, and fact that students and their parents chose not to be represented by counsel during initial hearing, and fact that they did not present evidence or exercise their statutory right to question witnesses did not create a procedural due process violation. *Stinney v. Sumter School Dist. 17* (S.C. 2011) 391 S.C. 547, 707 S.E.2d 397. Constitutional Law 4212(2); Education 752

#### 2. Sufficiency of evidence

Judicial review of a school board's decision regarding whether to expel a student is limited to ascertaining whether the board's decision is supported by substantial evidence. *Doe v. Richland County School Dist. Two* (S.C.App. 2009) 382 S.C. 656, 677 S.E.2d 610. Education 758

#### 3. Review

For purposes of judicial review to determine whether evidence supports a school board's decision to expel a student, "substantial evidence" is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the board reached or must have reached in order to justify its action. *Doe v. Richland County School Dist. Two* (S.C.App. 2009) 382 S.C. 656, 677 S.E.2d 610. Education 758

Court of Appeals cannot substitute its judgment for that of the educational authorities when reviewing school board's decision regarding whether to expel a student. *Doe v. Richland County School Dist. Two* (S.C.App. 2009) 382 S.C. 656, 677 S.E.2d 610. Education 758

### **SECTION 59-63-250. Transfer of pupils.**

The board or a designated administrator may transfer a pupil to another school in lieu of suspension or expulsion but only after a conference or hearing with the parents or legal guardian. The parents or legal guardian may appeal a transfer made by an administrator to the board.

#### CREDIT(S)

HISTORY: 1962 Code Section 21-775; 1973 (58) 407.

#### LIBRARY REFERENCES

Schools 154(1).

Westlaw Key Number Search: 345k154(1).

C.J.S. Civil Rights Sections 127, 130.  
C.J.S. Schools and School Districts Sections 713 to 715.

#### NOTES OF DECISIONS

In general 1

1. In general

Statute allowing school board's decision to suspend or expel student to be appealed to a court did not apply in disciplinary proceeding once hearing officer rejected expulsion and imposed sanction of transfer to alternative school, and thus student's right to appeal hearing officer's decision ended with school board. *Davis v. School Dist. of Greenville County* (S.C. 2007) 374 S.C. 39, 647 S.E.2d 219. Education 758  
Statute governing the transfer of a student to another school as a disciplinary sanction does not provide for appeal beyond the school board level and thus does allow for appeal of board's decision to a court. *Davis v. School Dist. of Greenville County* (S.C. 2007) 374 S.C. 39, 647 S.E.2d 219. Education 758

#### **SECTION 59-63-260.** Corporal punishment.

The governing body of each school district may provide corporal punishment for any pupil that it deems just and proper.

CREDIT(S)

HISTORY: 1962 Code Section 21-776; 1973 (58) 407.

#### LIBRARY REFERENCES

Schools 176.

Westlaw Key Number Search: 345k176.

C.J.S. Schools and School Districts Section 797.

#### NOTES OF DECISIONS

In general 1

1. In general

Disciplinary paddling of students is not cruel and unusual punishment, and a hearing is not required before it is administered. *Ingraham v. Wright*, U.S.Fl.1977, 97 S.Ct. 1401, 430 U.S. 651, 51 L.Ed.2d 711.

#### **SECTION 59-63-270.** Regulation or prohibition of clubs or like activities.

Any district board of trustees may regulate, control, or prohibit clubs or other such activities on school property or during school hours.

CREDIT(S)

HISTORY: 1962 Code Section 21-777; 1973 (58) 407.

#### LIBRARY REFERENCES

Schools 72.

Westlaw Key Number Search: 345k72.

C.J.S. Schools and School Districts Sections 375, 387 to 389, 396.

#### ATTORNEY GENERAL'S OPINIONS

Public school teachers have inherent authority to establish reasonable rules for their classes and extracurricular activities consistent with school regulations and the law. 1975-76 Ops Atty Gen, No 4425, p 282.

**SECTION 59-63-275.** Student hazing prohibited; definitions.

(A) For purposes of this section:

(1) "Student" means a person enrolled in a public education institution.

(2) "Superior student" means a student who has attended a state university, college, or other public education institution longer than another student or who has an official position giving authority over another student.

(3) "Subordinate student" means a person who attends a public education institution who is not defined as a "superior student" in item (2).

(4) "Hazing" means the wrongful striking, laying open hand upon, threatening with violence, or offering to do bodily harm by a superior student to a subordinate student with intent to punish or injure the subordinate student, or other unauthorized treatment by the superior student of a subordinate student of a tyrannical, abusive, shameful, insulting, or humiliating nature.

(B) Hazing at all public education institutions is prohibited. When an investigation has disclosed substantial evidence that a student has committed an act or acts of hazing, the student may be dismissed, expelled, suspended, or punished as the principal considers appropriate.

(C) The provisions of this section are in addition to the provisions of Article 6, Chapter 3 of Title 16.

CREDIT(S)

HISTORY: 2002 Act No. 310, Section 5.

LIBRARY REFERENCES

Schools 173.

Westlaw Key Number Search: 345k173.

C.J.S. Schools and School Districts Section 796.

**SECTION 59-63-280.** "Paging device" defined; adoption of policies addressing student possession.

(A) For purposes of this section, "paging device" means a telecommunications, to include mobile telephones, device that emits an audible signal, vibrates, displays a message, or otherwise summons or delivers a communication to the possessor.

(B) The board of trustees of each school district shall adopt a policy that addresses student possession of paging devices as defined in subsection (A). This policy must be included in the district's written student conduct standards. If the policy includes confiscation of a paging device, as defined in subsection (A), it should also provide for the return of the device to the owner.

CREDIT(S)

HISTORY: 1991 Act No. 24, Section 1; 2002 Act No. 230, Section 1.

LIBRARY REFERENCES

Schools 171.

Westlaw Key Number Search: 345k171.

C.J.S. Schools and School Districts Section 793.