

504.01E9 Sample Finding of Facts and Recommendation

Friday, August 11, 2023

SAMPLE FINDINGS OF FACTS

IN THE MATTER OF THE) HEARING EXAMINER'S

EXPULSION OF (Name of Student)) RECOMMENDATION

The matter of the proposed expulsion of (Student's Name) from Banner County School District No. 1 for the (first or second) semester of the 20__-__ school year was heard on (Date). The hearing was conduct~in the (Specific Location of the Hearing) at _____ Street, in Harrisburg, NE 69345-0005. The hearing commenced at (Time) and concluded at (Time).

Hearing Examiner (Name of Hearing Examiner) conducted the hearing. (Name of Student) was present as were (his/her) parents, Mr. and Mrs. (Name) . (Name of Student) was represented by (Name of Attorney), his attorney. Superintendent of Schools (Name) was present and was represented by (Name of Attorney) , attorney at law. The hearing was recorded by (tape or video) recording.

The administration introduced evidence, consisting of oral testimony and Exhibit Nos. (Specify Exhibit Numbers). The following persons testified on behalf of the administration: (Names of the Witnesses) . Evidence was introduced on behalf of (Name of Student), consisting of oral testimony and Exhibit Nos. (Specify Exhibit Numbers). The following persons testified on behalf of (Name of Student): (Names of the Witnesses).

Having reviewed the testimony and documents introduced at the hearing, I make the findings and recommendation set forth below.

FINDINGS OF FACT

I. By letter dated (Date) , (Exhibit No. ____) (Name of Administrator) notified Mr. and Mrs. (Name of Parents) and (Name of Student) of the proposal to expel (Name of Student) for the remainder of the (first or second) semester of the 20__-__ school year. The letter met all requirements of the Student Discipline Act, Sections §79-255 to §79-292 of the Nebraska statutes.

II. Mr. and Mrs. (Name of Parents) requested a hearing on the form provided by the school district (Exhibit No. ____) . The school district received the request on (Date Received).

III. By letter dated (Date), the Hearing Examiner notified Mr. and Mrs. (Name) and (Student's Name) of the time, date, and place of the hearing (Exhibit No. ____).

IV. By letter dated (Date) , (Exhibit No. ____) (Name of Administrator), notified Mr. and Mrs. (Name) of the names of the witnesses and who would testify at the hearing and provided them with written statements of the witnesses. The letter was sent by certified mail (Exhibit No. ____).

V. Mr. and Mrs. (Name) and (Student's Name) were notified of the proposal to expel (Student's Name) and of the hearing as required by law.

VI. Specify the facts of the case.

VII. Specify the facts of the case.

VIII. Specify the facts of the case.

IX. The rules of conduct are contained in the Student Handbook (Exhibit No. ____). See "Suspension and Expulsion" on pages ____ and ____ in particular. The rules of conduct are clear and definite.

X. The rules of conduct contained in the student handbook are reasonably necessary to carry out or prevent interference with carrying out the educational function of the school.

XI. The rules of conduct in the student handbook were distributed to (Name of Student) and his parents at the beginning of the 20__-__ school year. Exhibit No. ____ is a receipt signed by (Name of Student) attesting to (his/her) receipt of a copy of the handbook as well as (his/her) agreement to read it and to take a copy to (his/her) parents to read.

XII. The rules of conduct were posted in conspicuous places in the school throughout the school year.

XIII. (Name of Student)' s possession and use of the (knife) violated the rules of conduct contained in the student handbook which provide for out-of-school suspension or expulsion for the following kinds of misbehavior:

1. The commission of serious act of defiance toward a teacher or staff member, either in acts or words.
2. Any act of violence against the person or property of any teacher, school official, or student .
3. The possession, use, or transmittal of any object or material which is ordinarily or generally considered a weapon.
4. Continued willful disobedience.
5. Failure to follow established rules and procedures.

XIV. (Name of Student) 's possession and use of the (knife) violated Nebraska Statutes. Section §79-267 of the Student Discipline Act, states in pertinent part:

The following student conduct actions shall constitute grounds for long-term suspension, expulsion, or mandatory reassignment, subject to the procedural provisions of the Student Discipline Act, when such activity occurs on the school grounds or during an educational function or event off school grounds.

(2) Use of violence, force, coercion, threat, intimidation, or similar conduct in a manner that constitutes a substantial interference with school purpose.

(6) Knowingly possessing, handling, or transmitting any object or material that is ordinarily or generally considered a weapon.

XV. The knife in (Name of Student)' s possession is ordinarily or generally considered a weapon.

XVI. (Name of Student) 's actions were threatening and intimidating and constituted a substantial interference with school purposes.

XVII. (Name of Student) 's actions took place on school grounds.

XVIII. Section §79-283(3) of the Student Discipline Act of the Nebraska Statutes permits expulsion for the remainder of the school year for "the knowing and intentional possession, use, or transmission of a firearm, or other dangerous weapon ... "

XIX. (Name of Student) is not identified as a student who qualifies for special education services.

RECOMMENDATIONS

I recommend that (Name of Student) be expelled from Banner County School District No. 1 for the remainder of (first or second) semester of the 20__-__ school year. Though expulsion is the severest sanction authorized by law, it is my judgment that it would be in both (Student's Name) and the school district's best interests if (he/she) be expelled.

(Name of Student) 's behavior poses a danger to all other persons in Banner County School District No. 1. (his/her) behavior has been volatile and (he/she) has displayed a quick and strong temper. (Name of Student) poses too great a danger to other students and to staff to permit (him/her) to be retained as a student.

(Name of Student) poses a danger to (himself /herself) A sanction as severe as expulsion is warranted and necessary to impress upon (Name of Student) the gravity of (his/her) misbehavior and to effect a change in (his/her) behavior. I am convinced by the testimony that Superintendent (Name) does not take expulsion lightly and that the recommendation to expel (Name of Student) was reached after careful and deliberate consideration of the consequences.

I, therefore, recommend that (Name of Student) be expelled from Banner County School District No. 1 for the remainder of the (first or second) semester of the 20__-__ school year.

_____ (Name), Hearing Examiner

Dated this day of _____, 20__.