

## CHAPTER 127

## PROCEEDINGS, PROHIBITIONS, POLICIES

127.01	Definitions.	127.28	Policy.
127.02	Actions by districts.	127.281	Exclusion and expulsion of pupils with a disability.
127.03	Actions against districts and teachers.	127.29	Grounds for dismissal.
127.04	Judgment paid by treasurer.	127.30	Suspension procedures.
127.05	Tax levy for unpaid judgment.	127.31	Exclusion and expulsion procedures.
127.06	Issuance of execution.	127.32	Appeal.
127.08	Improper classification of pupils.	127.33	Judicial review.
127.09	Refusing to serve on school board.	127.34	Reports to service agency.
127.10	Failure of clerk to report.	127.35	Nonapplication of compulsory attendance law.
127.11	Drawing illegal order.	127.36	Report to commissioner of education.
127.12	Neglecting to keep or deliver records.	127.37	Notice of right to be reinstated.
127.13	Failure of auditor to report.	127.38	Policies to be established.
127.15	Dealing in school supplies.	127.39	Application.
127.16	Duty of officers to report violations of law.		DISCIPLINE OF STUDENTS
127.17	Secret fraternities and societies.	127.40	Definitions.
127.19	Officers, teachers; neglect of duty; penalty.	127.41	Discipline and removal of students from class.
127.20	Violations; penalties.	127.42	Review of policy.
127.21	Combination to control prices.	127.43	Definitions.
127.23	State officials to be disinterested; penalty.	127.44	Aversive and deprivation procedures.
127.25	Appeals.	127.45	Corporal punishment.
	PUPIL FAIR DISMISSAL ACT OF 1974		HARASSMENT AND VIOLENCE
127.26	Citation of sections 127.26 to 127.39.	127.455	Model policy.
127.27	Definitions.	127.46	Sexual, religious, and racial harassment and violence policy.

**127.01** MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

**127.01 DEFINITIONS.**

For purposes of this chapter, the words defined in section 120.02 have the same meaning.

*History: Ex1959 c 71 art 8 s 1*

**127.02** MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

**127.02 ACTIONS BY DISTRICTS.**

Any school board may prosecute actions in the name of the district in the following cases:

- (1) On a contract made with the district, or with the board in its official capacity;
- (2) To enforce a liability, or a duty enjoined by law, in its favor or in favor of the district;
- (3) To recover a penalty or forfeiture given by law to it or to the district; or
- (4) To recover damages for an injury to the rights or property of the district.

*History: Ex1959 c 71 art 8 s 2*

**127.03** MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

**127.03 ACTIONS AGAINST DISTRICTS AND TEACHERS.**

Subdivision 1. An action may be brought against any school district, either upon a contract made with the district or its board, in its official capacity and within the scope of its authority, or for an injury to the rights of the plaintiff arising from some act or omission of such board, whether the members of the board making the contract, or guilty of the act or omission complained of, be still in office or not.

Subd. 2. Upon written request of the teacher involved, any school district, however organized, shall provide legal counsel for any school teacher against whom claim is made or action is brought for recovery of damages in any tort action involving physical injury to any person or property or for wrongful death arising out of or in connection with the employment of such teacher with such school district. The choice of such legal counsel shall be made only after consultation with the teacher. Provision of counsel under this subdivision shall not be construed to render the school district liable for its torts, except as otherwise provided by law; or for reimbursement of costs of counsel provided to the teacher pursuant to the contract obligation of another or otherwise than under this subdivision; or for payment of any judgments or any other costs or disbursements in connection therewith where the judgment, cost or disbursement is against the teacher and not against the school district.

Subd. 3. **Immunity from civil liability.** It is a defense to a civil action for damages against a school official, as defined in section 609.2231, subdivision 5, to prove that the force used by the official was reasonable, was in the exercise of lawful authority, and was necessary under the circumstances to restrain the pupil or to prevent bodily harm or death to another.

**History:** *Ex1959 c 71 art 8 s 3; 1965 c 165 s 1; 1975 c 162 s 41; 1990 c 555 s 7; 1994 c 647 art 9 s 12*

**127.04** MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

**127.04 JUDGMENT PAID BY TREASURER.**

Except as hereinafter provided, no execution shall issue upon any judgment against a school district for the recovery of money. Unless the same be stayed by appeal, the treasurer shall pay such judgment, upon presentation of a certified copy thereof, if there is sufficient money of the district not otherwise appropriated. A treasurer who fails to do so shall be personally liable for the amount, unless the collection be afterwards stayed.

**History:** *Ex1959 c 71 art 8 s 4; 1986 c 444*

**127.05** MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

**127.05 TAX LEVY FOR UNPAID JUDGMENT.**

If such judgment is not satisfied, or stayed by appeal or otherwise, before the next annual meeting of the district, a certified copy thereof may be presented at its annual meeting, whereupon the district shall cause the amount of the judgment, with interest, to be added to the tax of the district. If such tax is not levied and certified to the county auditor on or before October 1 next after presentation, a certified copy thereof may be filed with such auditor at any time before the auditor has extended the tax of such district, with an affidavit showing the amount remaining unpaid thereon and the fact of such presentation to the district. Thereupon the auditor shall at once levy and extend such amount as a tax upon the property taxable within the district. By mutual agreement between the district and the judgment creditor the levy may be spread equally over a period of more than one year.

**History:** *Ex1959 c 71 art 8 s 5; 1986 c 444*

**127.051** MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

**127.052** MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

**127.053** MS 1949 [Renumbered 128.234]

**127.054** MS 1949 [Renumbered 128.235]

**127.056** MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

**127.057** MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

**127.058** MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

**127.06** MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

**127.06 ISSUANCE OF EXECUTION.**

If the judgment is not paid within 30 days after the time when the proceeds of such levy becomes payable by the county treasurer of the district, execution may be issued thereon, to which any property belonging to the district shall be liable.

**History:** *Ex1959 c 71 art 8 s 6*

**127.07** MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

**127.07** MS 1967 [Repealed, 1969 c 380 s 2]

**127.071** [Repealed, 1974 c 572 s 16]

**127.08** MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

**127.08 IMPROPER CLASSIFICATION OF PUPILS.**

No district shall classify its pupils with reference to race, color, social position, or nationality, nor separate its pupils into different schools or departments upon any of such grounds. Any district so classifying or separating any of its pupils, or denying school privileges to any of its pupils upon any such ground shall forfeit its share in all apportioned school funds for any apportionment period in which such classification, separation, or exclusion shall occur or continue. The state commissioner upon notice to the offending district and upon proof of the violation of the provisions of this section, shall withhold in the semiannual apportionment the share of such district and the county auditor shall thereupon exclude such district from the apportionment for such period.

**History:** *Ex1959 c 71 art 8 s 8; 1986 c 444*

**127.09** MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

**127.09 REFUSING TO SERVE ON SCHOOL BOARD.**

Any person who accepts election or appointment to any school board and who refuses or neglects to qualify or to serve or to perform any of the duties of the office, shall be fined \$10 for each offense. The fine shall be collected in an action before a county or municipal court. It may be prosecuted in the name of the district by any school board member or eligible voter of the district.

**History:** *Ex1959 c 71 art 8 s 9; 1980 c 609 art 6 s 30; 1983 c 359 s 7; 1987 c 266 art 2 s 12*

**127.10** MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

**127.10 FAILURE OF CLERK TO REPORT.**

Any clerk of a school district who fails to make any report required by law shall forfeit not less than \$5, nor more than \$50, for the use of the district.

**History:** *Ex1959 c 71 art 8 s 10; 1986 c 444*

**127.11** MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

**127.11 DRAWING ILLEGAL ORDER.**

Any school district clerk who illegally draws an order upon the treasurer, any chair or other officer who attests the order, and any school district treasurer who knowingly pays the order, shall each forfeit to the district twice the amount of the order, to be collected in an action brought in the name of the district by any eligible voter of the district.

**History:** *Ex1959 c 71 art 8 s 11; 1980 c 609 art 6 s 31; 1986 c 444; 1987 c 266 art 2 s 13*

127.12 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

**127.12 NEGLECTING TO KEEP OR DELIVER RECORDS.**

Any school district clerk who shall neglect to keep official books and records in the manner prescribed by law or shall willfully refuse to deliver such books and records to a successor in office, shall forfeit to the use of the district the sum of \$10 for each offense.

*History: Ex1959 c 71 art 8 s 12; 1986 c 444*

127.13 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

**127.13 FAILURE OF AUDITOR TO REPORT.**

Any county auditor who shall fail to make to the commissioner any report of apportionment required by law shall forfeit, for the benefit of the school fund of the county, the sum of \$50.

*History: Ex1959 c 71 art 8 s 13*

127.14 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

127.14 MS 1974 [Repealed, 1975 c 162 s 42]

**127.15 DEALING IN SCHOOL SUPPLIES.**

Except as provided for in sections 471.87 and 471.88, no teacher in the public schools, nor any state, county, town, city, or district school officer, including any superintendent of schools, or any member of any school board, nor any person connected with the public school system in any capacity, shall be interested directly or indirectly in the sale, proceeds, or profits of any book, apparatus, or furniture used, or to be used, in any school with which the person is connected in any official capacity. Any person violating any of the provisions of this section shall forfeit not less than \$50, nor more than \$200 for each such offense. This section shall not apply to a person who may have an interest in the sale of any book of which that person is the author. Nothing in this section shall prohibit the spouse of an employee or officer covered by this section from contracting with the school district for the sale or lease of books, apparatus, furniture, or other supplies to be used in a school with which the employee or officer is connected in any official capacity, as long as the employee's or officer's position does not involve approving contracts for supplies and the school board unanimously approves the transaction.

*History: Ex1959 c 71 art 8 s 15; 1973 c 121 s 1; 1986 c 444; 1993 c 224 art 9 s 36*

**127.16 DUTY OF OFFICERS TO REPORT VIOLATIONS OF LAW.**

Every officer to whom reports are required by law to be made and for the failure to make which a penalty or fine or forfeiture is provided, shall give immediate written notice of such failure to the delinquent and to the proper county attorney. Such county attorney shall thereupon institute proper proceedings to collect such penalty, fine, or forfeiture. Upon complaint of the district superintendent, or when it comes to the attorney's knowledge that any school officer has violated any provision of law for which violation a penalty, fine or forfeiture is provided, such attorney shall institute like proceedings.

*History: Ex1959 c 71 art 8 s 16; 1975 c 162 s 35; 1986 c 444*

**127.17 SECRET FRATERNITIES AND SOCIETIES.**

Subdivision 1. **Membership regulated.** It shall be unlawful for any pupil, registered as such and attending any public elementary, high school, community college, or technical college, which is partially or wholly maintained by public funds, to join, become a member of, or to solicit any other pupil of any such school to join, or become a member of, any secret fraternity or society wholly or partially formed from the membership

of pupils attending any such schools or to take part in the organization or formation of any such fraternity or society, except such societies or associations as are sanctioned by the board of the district concerned.

Subd. 2. **Rules and regulations.** The boards shall enforce the provisions of this section and have full power and authority to make, adopt, and modify all rules and regulations which, in their judgment and discretion, may be necessary for the proper governing of such schools and enforcing all the provisions of this section.

Subd. 3. **Penalties.** The boards shall have full power and authority, pursuant to the adoption of such rules and regulations made and adopted by them, to suspend or dismiss any pupil of such schools therefrom, or to prevent them, or any of them, from graduating or participating in school honors when, after investigation, in the judgment of such boards or a majority of their membership, such pupil is guilty of violating any of the provisions of this section or is guilty of violating any rule or regulation adopted by such boards for the purpose of governing such schools, or enforcing this section.

Subd. 4. **"Rushing" or soliciting forbidden.** It is a misdemeanor for any person, not a pupil of the schools, to be upon school grounds, or to enter any school building, for the purpose of "rushing" or soliciting any pupil of the schools to join any fraternity, society, or association organized outside of the schools. Municipal and county courts have jurisdiction of offenses committed under this subdivision. All persons found guilty shall be fined not less than \$2, nor more than \$10, to be paid to the county treasurer or, upon failure to pay the fine, to be imprisoned for not more than ten days.

**History:** *Ex1959 c 71 art 8 s 17; 1973 c 123 art 5 s 7; 1973 c 349 s 2; 1983 c 359 s 8; 1987 c 258 s 12; 1989 c 246 s 2*

**127.18** [Repealed, 1975 c 162 s 42]

#### **127.19 OFFICERS, TEACHERS; NEGLECT OF DUTY; PENALTY.**

Any school officer, truant officer, public or nonpublic school teacher, principal, district superintendent, or person providing instruction other than a parent refusing, willfully failing, or neglecting to perform any duty imposed by sections 120.101 to 120.14 is guilty of a misdemeanor; and, upon conviction, shall be punished for each offense by a fine of not more than \$10 or by imprisonment for not more than ten days. All fines, when collected, shall be paid into the county treasury for the benefit of the school district in which the offense is committed.

**History:** *Ex1959 c 71 art 8 s 19; 1975 c 162 s 36; 1986 c 444; 1987 c 178 s 7; 1989 c 209 art 2 s 1; 1991 c 199 art 2 s 14*

#### **127.20 VIOLATIONS; PENALTIES.**

Any person who fails or refuses to provide for instruction of a child of whom the person has legal custody, and who is required by section 120.101, subdivision 5, to receive instruction, when notified so to do by a truant officer or other official, or any person who induces or attempts to induce any such child unlawfully to be absent from school, or who knowingly harbors or employs, while school is in session, any child unlawfully absent from school, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than \$50, or by imprisonment for not more than 30 days. All fines, when collected, shall be paid into the county treasury for the benefit of the school district in which the offense is committed.

**History:** *Ex1959 c 71 art 8 s 20; 1986 c 444; 1987 c 178 s 8; 1989 c 296 s 3; 1993 c 224 art 14 s 14*

#### **127.21 COMBINATION TO CONTROL PRICES.**

If at any time any publisher shall enter into any understanding, agreement, or combination to control the prices or to restrict competition in the adoption or sale of school books, each and every contract made by the publisher shall thereupon become null and void at the option of the other parties thereto.

**History:** *Ex1959 c 71 art 8 s 21; 1980 c 609 art 6 s 32*

**127.22** [Repealed, 1980 c 609 art 6 s 48]

**127.23 STATE OFFICIALS TO BE DISINTERESTED; PENALTY.**

If the commissioner of education, an assistant or any employee connected with the commissioner's office, or any member of any school board shall accept or receive any money, gift or any property, or favor from any person, firm, or corporation offering for sale any textbooks, or any agent thereof, or from any person in any way interested in the sale of textbooks, the person accepting or receiving it shall, upon conviction, be punished by a fine not exceeding \$700, or by imprisonment in the county jail for not more than six months, or both by such fine and imprisonment.

**History:** *Ex1959 c 71 art 8 s 23; 1984 c 628 art 3 s 11; 1986 c 444*

**127.24** [Repealed, 1973 c 121 s 2]

**127.25 APPEALS.**

Subdivision 1. Any district or any person aggrieved by final order of the county board or final order of the county auditor, made pursuant to the provisions of this code, may appeal from such final order to the district court upon the following grounds:

- (1) That the county board or the county auditor had no jurisdiction to act;
- (2) That the county board or the county auditor exceeded its jurisdiction;
- (3) That the action appealed from is arbitrary, fraudulent, capricious or oppressive or in unreasonable disregard of the best interest of the territory affected;
- (4) That the order of action appealed from is based upon an erroneous theory of law.

An appeal from a final order of a county board or the county auditor shall be taken by serving a notice of appeal upon the county auditor. An appeal from a final order of a county board or a county auditor shall be taken to the district court in the county of the board or auditor. Notice of appeal must be served within 30 days of the issuance of the order appealed from and shall be accompanied by a corporate surety bond in the amount of \$250, conditioned for the payment of all costs taxed against appellant on such appeal. The notice of appeal shall be filed with the court administrator of the district court and noticed for hearing in the manner provided for the trial of civil actions by Minnesota rules of civil procedure.

In an appeal from an order of a county auditor effecting a consolidation the action of the commissioner or the state board approving the plat is reviewable and the commissioner may be called by either party as a witness in such appeal proceedings and may be examined under the rules of civil procedure relating to the cross-examination of adverse parties.

Subd. 2. Any school district or any person affected by final order of the county board or final order of the county auditor shall be permitted to intervene in appeals under this section as a party respondent.

Subd. 3. **Appeal.** An appeal lies from the district court in accordance with the rules of civil appellate procedure.

Subd. 4. Unless otherwise provided by law, any school district or any person aggrieved by a final order of the commissioner made pursuant to provisions of this code may proceed under the provisions of sections 14.57 to 14.69.

**History:** *Ex1959 c 71 art 8 s 25; 1975 c 162 s 37; 1976 c 239 s 36; 1978 c 764 s 90-92; 1982 c 424 s 130; 1983 c 247 s 59; 1Sp1986 c 3 art 1 s 82; 1987 c 384 art 2 s 1*

**PUPIL FAIR DISMISSAL ACT OF 1974**

**127.26 CITATION OF SECTIONS 127.26 TO 127.39.**

Sections 127.26 to 127.39 may be cited as "The pupil fair dismissal act of 1974."

**History:** *1974 c 572 s 1*

**127.27 DEFINITIONS.**

Subdivision 1. As used in sections 127.26 to 127.39, 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. It does not include removal from class.

Subd. 3. "District" means any school district.

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 an amount of time equal to one school year from the date a pupil is expelled.

Subd. 6. **Parent.** "Parent" means (a) one of the pupil's parents, or (b) in the case of divorce or legal separation, or if the child's mother was not married to the child's father when the child was conceived nor when the child was born, the custodial parent.

Subd. 7. "Pupil" means any student with or without a disability 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.

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 surrounding persons or property. 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.

**History:** 1974 c 572 s 2; 1975 c 162 s 41; 1983 c 7 s 1; 1983 c 163 s 1; 1983 c 243 s 5 subd 1; 1986 c 444; 1991 c 265 art 3 s 38; 1994 c 647 art 4 s 36

**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 expulsion.

**History:** 1974 c 572 s 3

**127.281 EXCLUSION AND EXPULSION OF PUPILS WITH A DISABILITY.**

When a pupil who has an individual education plan is excluded or expelled under sections 127.26 to 127.39 for misbehavior that is not a manifestation of the pupil's disabling condition, the district shall provide special education and related services after a period of suspension, if suspension is imposed. The district shall initiate a review of the pupil's individual education plan within ten days of the commencement of an expulsion, exclusion, or a suspension of ten days or more.

**History:** 1991 c 265 art 3 s 19,38

**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, except where it appears that the pupil will create an immediate and substantial danger to self or to sur-

rounding persons or property. 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.

**History:** 1974 c 572 s 4; 1978 c 764 s 93; 1986 c 444

### 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 self or to surrounding persons or property.

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 sections 127.26 to 127.39, shall be personally served upon the pupil at or before the time the suspension is to take effect, and upon the pupil's 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 surrounding persons or property, the written notice shall be served either personally or by certified mail upon the pupil and the pupil's parent or guardian within 48 hours of the suspension. Service by certified mail is complete upon mailing.

Subd. 3. Notwithstanding the provisions of 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.

**History:** 1974 c 572 s 5; 1978 c 764 s 94; 1986 c 444

### 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.

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

(a) Be served upon the pupil and the pupil's 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 sections 127.26 to 127.39;

(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 the pupil's 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 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 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 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.

Subd. 15. **Admission or readmission plan.** A school board may prepare and enforce an admission or readmission plan for any pupil who is suspended, excluded, or expelled from school. The plan may include measures to improve the pupil's behavior and require parental involvement in the admission or readmission process, and may indicate the consequences to the pupil of not improving the pupil's behavior.

**History:** 1974 c 572 s 6; 1986 c 444; 1994 c 647 art 4 s 37

## 127.32 APPEAL.

An exclusion or expulsion decision made pursuant to sections 127.26 to 127.39 may be appealed to the commissioner of education. The commissioner or the commissioner's 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 127.33.

**History:** 1974 c 572 s 7; 1986 c 444

**127.33 JUDICIAL REVIEW.**

The decision of the commissioner of education made pursuant to sections 127.26 to 127.39 shall be subject to judicial review in accordance with chapter 14.

**History:** 1974 c 572 s 8; 1983 c 247 s 60

**127.34 REPORTS TO SERVICE AGENCY.**

The school board shall report any action taken pursuant to sections 127.26 to 127.39 to the appropriate public service agency, when the pupil is under the supervision of such agency.

**History:** 1974 c 572 s 9

**127.35 NONAPPLICATION OF COMPULSORY ATTENDANCE LAW.**

The provisions of section 120.101, subdivision 5, shall not apply to any pupil during a dismissal pursuant to sections 127.26 to 127.39.

**History:** 1974 c 572 s 10; 1989 c 209 art 2 s 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.

**History:** 1974 c 572 s 11

**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 the pupil's parents shall be informed by certified mail of the pupil's right to attend and to be reinstated in the public school.

**History:** 1974 c 572 s 12; 1986 c 444

**127.38 POLICIES TO BE ESTABLISHED.**

(a) 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 sections 127.26 to 127.39. 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 the pupil for readmission.

(b) The commissioner shall actively encourage and assist school districts to cooperatively establish alternative learning programs that offer instruction to pupils who are dismissed from school for willfully engaging in dangerous, disruptive, or violent behavior, including for possessing a firearm in a school zone.

**History:** 1974 c 572 s 13; 1986 c 444; 1994 c 647 art 4 s 38

**127.39 APPLICATION.**

Subdivision 1. Sections 127.26 to 127.39 shall not be deemed to amend or otherwise affect or change section 363.03, subdivision 5, clause (2).

Subd. 2. Sections 127.26 to 127.39 shall apply only to those portions of the school program for which credit is granted.

**History:** 1974 c 572 s 14.15

## DISCIPLINE OF STUDENTS

## 127.40 DEFINITIONS.

Subdivision 1. **Removal from class.** "Removal from class" and "removal" mean any actions taken by a teacher, principal, or other school district employee to prohibit a pupil from attending class for a period of time not to exceed three class or activity periods, pursuant to procedures established in the school district discipline policy adopted by the school board pursuant to section 127.41.

Subd. 2. **Class period.** "Class period" or "activity period" means, in secondary grades, instruction for a given course of study. A class period or activity period means, in elementary grades, a period of time not to exceed one hour, regardless of the subject of instruction.

**History:** 1983 c 163 s 2

## 127.41 DISCIPLINE AND REMOVAL OF STUDENTS FROM CLASS.

Subdivision 1. **Required policy.** Prior to the beginning of the 1984-1985 school year each school board shall adopt a written districtwide school discipline policy which shall include written rules of conduct for pupils and grounds and procedures for removal of pupils from class. The policy shall be developed with the participation of administrators, teachers, employees, pupils, parents, community members, and such other individuals or organizations as the board determines appropriate.

Subd. 2. **Grounds for removal from class.** The policy shall establish the various grounds for which a pupil may be removed from a class in the district for a period of time pursuant to the procedures specified in the policy. The grounds in the policy shall include at least the following provisions as well as other grounds determined appropriate by the board:

- (a) willful conduct which materially and substantially disrupts the rights of others to an education;
- (b) willful conduct which endangers school district employees, the pupil or other pupils, or the property of the school;
- (c) willful violation of any rule of conduct specified in the discipline policy adopted by the board.

Subd. 3. **Policy components.** The policy shall include at least the following components:

- (a) rules governing pupil conduct and procedures for informing pupils of the rules;
- (b) the grounds for removal of a pupil from a class;
- (c) the authority of the classroom teacher to remove pupils from the classroom pursuant to procedures and rules established in the district's policy;
- (d) the procedures for removal of a pupil from a class by a teacher, school administrator, or other school district employee;
- (e) the period of time for which a pupil may be removed from a class, which may not exceed three class periods for a violation of a rule of conduct;
- (f) provisions relating to the responsibility for and custody of a pupil removed from a class;
- (g) the procedures for return of a pupil to the specified class from which the pupil has been removed;
- (h) the procedures for notifying pupils and parents or guardians of violations of the rules of conduct and of resulting disciplinary actions;
- (i) any procedures determined appropriate for encouraging early involvement of parents or guardians in attempts to improve a pupil's behavior;
- (j) any procedures determined appropriate for encouraging early detection of behavioral problems;
- (k) any procedures determined appropriate for referring pupils in need of special education services to those services;

(1) the procedures for consideration of whether there is a need for a further assessment or of whether there is a need for a review of the adequacy of a current individual education plan of a pupil with a disability who is removed from class; and

(m) procedures for detecting and addressing chemical abuse problems of pupils while on the school premises.

**History:** 1983 c 163 s 3; 1987 c 295 s 5; 1991 c 265 art 3 s 38

#### 127.42 REVIEW OF POLICY.

The principal and the licensed employees in a school building shall confer at least annually to review the discipline policy and to assess whether the policy has been enforced.

**History:** 1983 c 163 s 4

#### 127.43 DEFINITIONS.

Subdivision 1. **Application.** For the purposes of providing instruction to children with a disability under sections 120.17 and 120.1701, this section, and section 127.44, the following terms have the meanings given them.

Subd. 2. **Aversive procedure.** "Aversive procedure" means the planned application of an aversive stimulus.

Subd. 3. **Aversive stimulus.** "Aversive stimulus" means an object that is used, or an event or situation that occurs immediately after a specified behavior in order to suppress that behavior.

Subd. 4. **Deprivation procedure.** "Deprivation procedure" means the planned delay or withdrawal of goods, services, or activities that the person would otherwise receive.

Subd. 5. **Emergency.** "Emergency" means a situation in which immediate intervention is necessary to protect a pupil or other individual from physical injury or to prevent property damage.

**History:** 1988 c 554 s 1; 1990 c 495 s 1; 1991 c 265 art 3 s 38; 1994 c 647 art 13 s 11

#### 127.44 AVERSIVE AND DEPRIVATION PROCEDURES.

The state board of education shall adopt rules governing the use of aversive and deprivation procedures by school district employees or persons under contract with a school district. The rules must:

(1) promote the use of positive approaches and must not encourage or require the use of aversive or deprivation procedures;

(2) require that planned application of aversive and deprivation procedures be a part of an individual education plan;

(3) require parents or guardians to be notified after the use of aversive or deprivation procedures in an emergency;

(4) establish health and safety standards for the use of time-out procedures that require a safe environment, continuous monitoring of the child, ventilation, and adequate space; and

(5) contain a list of prohibited procedures.

**History:** 1988 c 554 s 2; 1990 c 495 s 2

#### 127.45 CORPORAL PUNISHMENT.

Subdivision 1. **Definition.** For the purpose of this section, "corporal punishment" means conduct involving:

(1) hitting or spanking a person with or without an object; or

(2) unreasonable physical force that causes bodily harm or substantial emotional harm.

Subd. 2. **Corporal punishment not allowed.** An employee or agent of a public school district shall not inflict corporal punishment or cause corporal punishment to be inflicted upon a pupil to reform unacceptable conduct or as a penalty for unacceptable conduct.

Subd. 3. **Violation.** Conduct that violates subdivision 2 is not a crime under section 645.241, but may be a crime under chapter 609 if the conduct violates a provision of chapter 609.

**History:** 1989 c 114 s 1; 1990 c 382 s 1

## HARASSMENT AND VIOLENCE

### 127.455 MODEL POLICY.

The commissioner of education shall maintain and make available to school boards a model sexual, religious, and racial harassment and violence policy. The model policy shall address the requirements of section 127.46.

Each school board shall submit to the commissioner of education a copy of the sexual, religious, and racial harassment and sexual, religious, and racial violence policy the board has adopted.

**History:** 1989 c 329 art 8 s 8; 1990 c 426 art 1 s 17; 1993 c 224 art 9 s 37

### 127.46 SEXUAL, RELIGIOUS, AND RACIAL HARASSMENT AND VIOLENCE POLICY.

Each school board shall adopt a written sexual, religious, and racial harassment and sexual, religious, and racial violence policy that conforms with sections 363.01 to 363.15. The policy shall apply to pupils, teachers, administrators, and other school personnel, include reporting procedures, and set forth disciplinary actions that will be taken for violation of the policy. Disciplinary actions must conform with collective bargaining agreements and sections 127.27 to 127.39. The policy must be conspicuously posted throughout each school building, given to each district employee and independent contractor at the time of entering into the person's employment contract, and included in each school's student handbook on school policies. Each school must develop a process for discussing the school's sexual, religious, and racial harassment and violence policy with students and school employees.

**History:** 1989 c 329 art 8 s 7; 1992 c 499 art 8 s 17; 1992 c 571 art 10 s 7; 1993 c 224 art 9 s 38; 1994 c 647 art 8 s 25