



## Ohio Revised Code

### Section 3301.121 Adjudication procedure to determine whether to permanently exclude pupil.

Effective: January 1, 2002

Legislation: Senate Bill 179 - 123rd General Assembly

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(A) In addition to the duties and responsibilities of the superintendent of public instruction set forth in section 3301.12 of the Revised Code, the superintendent, in accordance with this section and section 3313.662 of the Revised Code, shall conduct an adjudication procedure to determine whether to permanently exclude from attending any of the public schools of this state any pupil who is the subject of a resolution forwarded to the superintendent by a board of education pursuant to division (D) of section 3313.662 of the Revised Code.

(B)(1) Except as provided in division (B)(3) of this section, within fourteen days after receipt of a resolution forwarded by a board of education pursuant to division (D) of section 3313.662 of the Revised Code, the superintendent of public instruction or the superintendent's designee shall provide the pupil who is the subject of the resolution and that pupil's parent, guardian, or custodian with a notice of an opportunity for an adjudication hearing on the proposed permanent exclusion of the pupil from attending any of the public schools of this state. The notice shall include all of the following:

(a) The date, time, and place of the permanent exclusion adjudication hearing;

(b) A statement informing the pupil and the pupil's parent, guardian, or custodian that the pupil may attend the adjudication hearing at the date, time, and place set forth in the notice, that the failure of the pupil or the pupil's parent, guardian, or custodian to attend the adjudication hearing will result in a waiver of the pupil's right to present evidence, testimony, and factors in mitigation of the pupil's permanent exclusion at an adjudication hearing on the proposed permanent exclusion, and that the pupil shall be accorded all of the following rights:

(i) The right to testify, to present evidence and the testimony of witnesses, and to confront, cross-examine, and compel the attendance of witnesses;



(ii) The right to a record of the hearing;

(iii) The right to written findings.

(c) A statement informing the pupil and the pupil's parent, guardian, or custodian that the pupil has the right to be represented by counsel at the adjudication hearing.

(d) A statement informing the pupil and the pupil's parent, guardian, or custodian that, if the pupil by failing to attend the hearing waives the pupil's right to present evidence, testimony, and factors in mitigation of the pupil's permanent exclusion at an adjudication hearing on the proposed permanent exclusion, the superintendent is required to review the information relevant to the permanent exclusion that is available to the superintendent and is permitted to enter an order requiring the pupil's permanent exclusion from attending any of the public schools of this state at any time within seven days after the conclusion of the adjudication hearing.

(2) The superintendent or the superintendent's designee shall provide the notice required by division (B)(1) of this section to the pupil and to the pupil's parent, guardian, or custodian by certified mail or personal service.

(3)(a) If a pupil who is the subject of a resolution forwarded to the superintendent of public instruction by a board of education pursuant to section 3313.662 of the Revised Code is in the custody of the department of youth services pursuant to a disposition under any provision of Chapter 2152. of the Revised Code, other than division (A)(1)(a) of section 2152.16 of the Revised Code, at the time the resolution is forwarded, the department shall notify in writing the superintendent of public instruction and the board of education that forwarded the resolution of that fact. Upon receipt of the notice, the superintendent shall delay providing the notice required by division (B)(1) of this section and the adjudication of the request for permanent exclusion until the superintendent receives further notice from the department pursuant to division (B)(3)(b) of this section.

(b) At least sixty days before a pupil described in division (B)(3)(a) of this section will be released from institutionalization or institutionalization in a secure facility by the department of youth services, the department shall notify in writing the superintendent of public instruction and the board of education that forwarded the resolution pursuant to section 3313.662 of the Revised Code of the



impending release and shall provide in that notice information regarding the extent of the education the pupil received while in the custody of the department, including whether the pupil has obtained a certificate of high school equivalence.

If the pupil has not obtained a certificate of high school equivalence while in the custody of the department of youth services, the superintendent of public instruction shall provide the notice required by division (B)(1) of this section and, at least thirty days before the pupil is to be released from institutionalization or institutionalization in a secure facility, conduct an adjudication procedure to determine whether to permanently exclude the pupil from attending the public schools of this state in accordance with this section. If the pupil has obtained a certificate of high school equivalence while in the custody of the department, the superintendent, in the superintendent's discretion, may conduct the adjudication.

(C)(1) Except as provided in division (B)(3) of this section, the date of the adjudication hearing set forth in the notice required by division (B)(1) of this section shall be a date no less than fourteen days nor more than twenty-one days from the date the superintendent sends the notice by certified mail or initiates personal service of the notice.

(2) The superintendent, for good cause shown on the written request of the pupil or the pupil's parent, guardian, or custodian, or on the superintendent's own motion, may grant reasonable continuances of any adjudication hearing held under this section but shall not grant either party total continuances in excess of ten days.

(3) If a pupil or the pupil's parent, guardian, or custodian does not appear at the adjudication hearing on a proposed permanent exclusion, the superintendent or the referee appointed by the superintendent shall proceed to conduct an adjudication hearing on the proposed permanent exclusion on the date for the adjudication hearing that is set forth in the notice provided pursuant to division (B)(1) of this section or on the date to which the hearing was continued pursuant to division (C)(2) of this section.

(D)(1) The superintendent or a referee appointed by the superintendent may conduct an adjudication hearing to determine whether to permanently exclude a pupil in one of the following counties:



- (a) The county in which the superintendent holds the superintendent's office;
- (b) Upon the request of the pupil or the pupil's parent, guardian, custodian, or attorney, in the county in which the board of education that forwarded the resolution requesting the permanent exclusion is located if the superintendent, in the superintendent's discretion and upon consideration of evidence of hardship presented on behalf of the requesting pupil, determines that the hearing should be conducted in that county.
- (2) The superintendent of public instruction or a referee appointed by the superintendent shall conduct an adjudication hearing on a proposed permanent exclusion of a pupil. The referee may be an attorney admitted to the practice of law in this state but shall not be an attorney that represents the board of education that forwarded the resolution requesting the permanent exclusion.
- (3) The superintendent or referee who conducts an adjudication hearing under this section may administer oaths, issue subpoenas to compel the attendance of witnesses and evidence, and enforce the subpoenas by a contempt proceeding in the court of common pleas as provided by law. The superintendent or referee may require the separation of witnesses and may bar from the proceedings any person whose presence is not essential to the proceedings.
- (4) The superintendent of public instruction shall request the department of rehabilitation and correction, the sheriff, the department of youth services, or any publicly funded out-of-home care entity that has legal custody of a pupil who is the subject of an adjudication hearing held pursuant to this section to transport the pupil to the place of the adjudication hearing at the time and date set for the hearing. The department, sheriff, or publicly funded out-of-home care entity that receives the request shall provide transportation for the pupil who is the subject of the adjudication hearing to the place of the hearing at the time and date set for the hearing. The department, sheriff, or entity shall pay the cost of transporting the pupil to and from the hearing.
- (E)(1) An adjudication hearing held pursuant to this section shall be adversary in nature, shall be conducted fairly and impartially, and may be conducted without the formalities of a criminal proceeding. A pupil whose permanent exclusion is being adjudicated has the right to be represented by counsel at the adjudication hearing. If the pupil has the financial capacity to retain counsel, the superintendent or the referee is not required to provide counsel for the pupil. At the adjudication



hearing, the pupil also has the right to cross-examine witnesses against the pupil, to testify, to present evidence and the testimony of witnesses on the pupil's behalf, and to raise factors in mitigation of the pupil's being permanently excluded.

(2) In an adjudication hearing held pursuant to this section and section 3313.662 of the Revised Code, a representative of the school district of the board of education that adopted and forwarded the resolution requesting the permanent exclusion of the pupil shall present the case for permanent exclusion to the superintendent or the referee. The representative of the school district may be an attorney admitted to the practice of law in this state. At the adjudication hearing, the representative of the school district shall present evidence in support of the requested permanent exclusion. The superintendent or the superintendent's designee shall consider the entire school record of the pupil who is the subject of the adjudication and shall consider any of the following information that is available:

- (a) The academic record of the pupil and a record of any extracurricular activities in which the pupil previously was involved;
- (b) The disciplinary record of the pupil and any available records of the pupil's prior behavioral problems other than the behavioral problems contained in the disciplinary record;
- (c) The social history of the pupil;
- (d) The pupil's response to the imposition of prior discipline and sanctions imposed for behavioral problems;
- (e) Evidence regarding the seriousness of and any aggravating factors related to the offense that is the basis of the resolution seeking permanent exclusion;
- (f) Any mitigating circumstances surrounding the offense that gave rise to the request for permanent exclusion;
- (g) Evidence regarding the probable danger posed to the health and safety of other pupils or of school employees by the continued presence of the pupil in a public school setting;



(h) Evidence regarding the probable disruption of the teaching of any school district's graded course of study by the continued presence of the pupil in a public school setting;

(i) Evidence regarding the availability of alternative sanctions of a less serious nature than permanent exclusion that would enable the pupil to remain in a public school setting without posing a significant danger to the health and safety of other pupils or of school employees and without posing a threat of the disruption of the teaching of any district's graded course of study.

(3) In any adjudication hearing conducted pursuant to this section and section 3313.662 of the Revised Code, a court order that proves the adjudication or conviction that is the basis for the resolution of the board of education seeking permanent exclusion is sufficient evidence to prove that the pupil committed a violation as specified in division (F)(1) of this section.

(4) The superintendent or the referee shall make or cause to be made a record of any adjudication hearing conducted pursuant to this section.

(5) A referee who conducts an adjudication hearing pursuant to this section shall promptly report the referee's findings in writing to the superintendent at the conclusion of the adjudication hearing.

(F) If an adjudication hearing is conducted or a determination is made pursuant to this section and section 3313.662 of the Revised Code, the superintendent shall review and consider the evidence presented, the entire school record of the pupil, and any available information described in divisions (E)(2)(a) to (i) of this section and shall not enter an order of permanent exclusion unless the superintendent or the superintendent's appointed referee finds, by a preponderance of the evidence, both of the following:

(1) That the pupil was convicted of or adjudicated a delinquent child for committing a violation listed in division (A) of section 3313.662 of the Revised Code and that the violation was committed when the child was sixteen years of age or older;

(2) That the pupil's continued attendance in the public school system may endanger the health and safety of other pupils or school employees.



(G)(1) Within seven days after the conclusion of an adjudication hearing that is conducted pursuant to this section, the superintendent of public instruction shall enter an order in relation to the permanent exclusion of the pupil who is the subject of the hearing or determination.

(2) If the superintendent or a referee makes the findings described in divisions (F)(1) and (2) of this section, the superintendent shall issue a written order that permanently excludes the pupil from attending any of the public schools of this state and immediately shall send a written notice of the order to the board of education that forwarded the resolution, to the pupil who was the subject of the resolution, to that pupil's parent, guardian, or custodian, and to that pupil's attorney, that includes all of the following:

(a) A copy of the order of permanent exclusion;

(b) A statement informing the pupil and the pupil's parent, guardian, or custodian of the pupil's right to appeal the order of permanent exclusion pursuant to division (H) of this section and of the possible revocation of the permanent exclusion pursuant to division (I) of this section if a final judicial determination reverses the conviction or adjudication that was the basis for the permanent exclusion;

(c) A statement informing the pupil and the pupil's parent, guardian, or custodian of the provisions of divisions (F), (G), and (H) of section 3313.662 of the Revised Code.

(3) If the superintendent or a referee does not make the findings described in divisions (F)(1) and (2) of this section, the superintendent shall issue a written order that rejects the resolution of the board of education and immediately shall send written notice of that fact to the board of education that forwarded the resolution, to the pupil who was the subject of the proposed resolution, and to that pupil's parent, guardian, or custodian.

(H) A pupil may appeal an order of permanent exclusion made by the superintendent of public instruction pursuant to this section and section 3313.662 of the Revised Code to the court of common pleas of the county in which the board of education that forwarded the resolution requesting the permanent exclusion is located. The appeal shall be conducted in accordance with Chapter 2505. of the Revised Code.



(I) If a final judicial determination reverses the conviction or adjudication that is the basis of a permanent exclusion ordered under this section, the superintendent of public instruction, upon receipt of a certified copy of an order reflecting that final determination from the pupil or that pupil's parent, guardian, custodian, or attorney, shall revoke the order of permanent exclusion.

(J) As used in this section:

(1) "Permanently exclude" and "permanent exclusion" have the same meanings as in section 3313.662 of the Revised Code.

(2) "Out-of-home care" and "legal custody" have the same meanings as in section 2151.011 of the Revised Code.

(3) "Certificate of high school equivalence" has the same meaning as in section 4109.06 of the Revised Code.