

To: Policy Subcommittee  
From: Ty Alper and Susan Craig  
Date: April 8, 2016  
Re: BP re Expulsions

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Attached is a first draft policy governing expulsions. There is more work to be done on it, and an AR to be drafted as well, but it is a first draft for discussion at the April 8 meeting.

## Berkeley USD Board Policy

### Expulsion

BP XXXX

The Governing Board is dedicated to implementing graduated discipline practices and policies that aim to keep all our students in class, receiving instruction and support they need to succeed. The goal of all discipline interventions is to facilitate the student's understanding of the District's behavioral expectations and the harm caused by the behavior, repair the harm caused, and identify how to prevent a reoccurrence in the future. Expulsion from school is an extreme and severe disruption of the educational process, and must be reserved for behavior that requires referral for expulsion under the law or that poses a serious threat to the safety of students or staff.

#### Expellable offenses

Except in extraordinary circumstances, the District shall not seek the expulsion of students for offenses other than those mandated by law to be referred for expulsion.

With respect to those offenses for which expulsion is discretionary under the law, the Board does not, except in extraordinary circumstances, believe that an expulsion recommendation is appropriate, and instead believes that alternative means of discipline and correction should be used instead. Ed Code Sec. 48915.

#### Suspended expulsions

Except in extraordinary circumstances, the District shall seek to suspend the expulsion of any student whose behavior warrants or mandates a referral for expulsion.

#### Legal counsel for students facing expulsion

From the beginning of the expulsion process, District staff shall make every effort to provide information about free legal counsel to students facing expulsion and shall encourage them to avail themselves of such representation if available.

#### Advocates for complainants in expulsion cases

**Comment [TA1]:** Note that BFT contract states as follows, which is consistent with 48915(a)1.

16.13 The Principal or the Superintendent of Schools shall recommend a pupil's expulsion for any of the following acts, unless the Principal or Superintendent finds, and so reports in writing to the governing Board, that expulsion is inappropriate, due to the particular circumstance, which shall be set out in the report of the incident.

- a) Causing serious physical injury to another person, except in self-defense
- b) Possession of any firearm, knife, explosive, or other dangerous object of no reasonable use to the pupil at school or at a school activity off school grounds
- c) Unlawful sale of any controlled substance
- d) Robbery or extortion
- E) Assault or battery upon a school employee

**Comment [TA2]:** Delineate these offenses in the AR

**Comment [T3]:** Spell these out in AR

District staff shall make every effort to provide information about free victim advocates to complainants in expulsion cases and shall encourage them to avail themselves of such resources if available.

### **Extension of suspensions pending expulsion**

The extended suspension of a student pending an expulsion hearing is a significant interruption of the student's education that occurs prior to any finding of violation at an adjudicated hearing, and should only be sought in extraordinary circumstances. By law, the suspension of a student pending an expulsion hearing shall not be extended unless the "presence of the pupil at the school or in an alternative school placement would cause a danger to persons or property or a threat of disrupting the instructional process." Ed. Code § 48911.

Before seeking to extend a suspension pending expulsion, District staff shall explore whether an alternative school placement, or an agreement by the accused student to stay away from the complainant at the current school, would alleviate the danger that the student's presence at his or her current school might pose.

If District staff determines that the presence of a student awaiting an expulsion hearing at his or her school or in an alternative school placement would cause a danger to persons or property, or threaten to disrupt the educational process, the appropriate District official shall make the request in writing to the Superintendent. The written request must include the reasons for the requested extension of suspension, as well as an explanation of why an alternative school placement, or an agreement to stay away from the complainant at the current school, would not alleviate the danger posed by the student's presence at his or her school.

The suspension shall not be extended unless the Superintendent agrees to the request in writing. [Say the maximum amount of time the suspension can last, with citation to ed code?]

[Add provision for appealing an extended suspension to the Superintendent?]

### **Instruction during extended suspension**

[Add a provision that accounts for education of students on suspended expulsions.]

### **Use of restorative justice in expulsion cases**

The Governing Board encourages the use of restorative justice in appropriate cases that are referable for expulsion, including cases that require mandatory referral for expulsion. Restorative justice is, in many cases, more likely to repair harm to the complainant and likely to be less traumatic to the complainant than an adversarial expulsion hearing. It also allows for the student offender to play an active role in taking ownership of the harm done, repairing the harm, learning from the consequences of behavioral choices, while continuing to receive an education.

**Comment [TA4]:** The AR will need to spell out how this can happen consistent with the ed code timelines etc. Goal is to use RJ and avoid hearing if possible; i.e., get to RJ before expulsion hearing.

### **Investigation of expulsion cases**

[Add provision governing investigation, questioning of students, trauma-informed questioning of complainants, etc. Details can be in AR.]

### **Due process**

A student facing expulsion has the right to fully and meaningfully present their defense at an expulsion hearing. To that end, the District shall: 1) allow and compensate teachers to testify for students facing expulsions at expulsion hearings, if teachers choose to do so; 2) issue subpoenas for an expulsion hearing at the student's request; 3) provide the student with all documents and evidence related to the case, and do so in a timely manner; 4) provide the student with a list of any and all witnesses the school intends to have testify at the hearing.

**Comment [TA5]:** We can include details of discovery etc in the AR.

The District shall also allow and compensate teachers to attend the hearing in support of the complainant, to the extent possible and without violating the confidentiality of the complainant and the accused student.

### **The Board's role in the expulsion process**

[Add provision here explaining what the Board's role is in the expulsion process, what the standard of review is for the Board to review the findings of the administrative panel, what the Board's options are, and what the threshold requirements are for the Board's various options.]

### **Expungement**

**Comment [TA6]:** Possibly this belongs in a separate BP?

Most juvenile delinquency records are automatically sealed; school discipline records should be as well.

Upon a student's graduation from high school, the District shall automatically expunge all records pertaining to the expulsion and suspension.

Except where required by law, the District shall not provide student discipline information to any outside entity, including institutions of higher education.

A student may petition the Board to expunge records related to suspension or expulsion prior to graduation.

**Comment [TA7]:** Add details in AR, including how student can do this, and what standard the Board should use

Policy BERKELEY UNIFIED SCHOOL DISTRICT  
adopted: XXXXX Berkeley, California