

To: Policy Subcommittee
From: Ty Alper and Susan Craig
Date: May 18, 2016
Re: BP re Expulsions

Attached is a clean revised draft policy governing expulsions, with some comments and questions in the margins. Also attached is a document that compares the current version of the policy with the version of the policy that was discussed at our May 4, 2016 meeting.

We continue to be grateful for the input from many community partners who have provided input on previous drafts.

Note that the attached policy is only a policy governing expulsions and the expulsion process. It does not cover Title IX complaints, suspensions (except those incident to a pending expulsion proceeding), or the details of alternatives to traditional discipline, such as restorative justice. Those important issues are dealt with in other policies, and in the AR for this policy, which has yet to be drafted.

We are including here a slightly revised timeline we hope and expect to meet for approval of this policy:

Proposed Timeline

1/26/16	First discussion of expulsion policy in Policy Subcommittee
2/26/16	Second discussion of expulsion policy in Policy Subcommittee
4/8/16	Third discussion of expulsion policy in Policy Subcommittee
5/4/16	Fourth discussion of expulsion policy in Policy Subcommittee
5/18/16	Fifth discussion of expulsion policy in Policy Subcommittee; vote to refer to Board for First Reading
6/1/16	First Reading of expulsion policy at School Board
Mid-June	Sixth discussion of expulsion policy in Policy Subcommittee (if needed)
6/29/16	Second Reading/Approval of expulsion policy at School Board

**Berkeley USD
Board Policy**

Expulsion

BP **XXXX**

Comment [TA1]: This is the draft Board policy. Proposed administrative regulations (AR) will follow, and will contain the details for implementation. Note: We will need to make minor revision to BP 5144 to ensure there are no inconsistencies between that policy and this one.

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. Expulsion from school is an extreme and severe disruption of the educational process, and must be reserved for behavior that requires expulsion under the law or that poses a serious future threat to the safety of students or staff.

Definitions

“Accused student” means the student against whom expulsion proceedings are initiated or contemplated.

“Complainant” means the student who is the alleged victim of another student’s actions, regardless of whether a formal complaint has been filed.

Expellable offenses

The Education Code provides for different treatment of different kinds of alleged offenses.

If a principal or the Superintendent determines that a student has committed any of the following acts at school or at a school activity off school grounds, the Education Code requires that he or she immediately suspend the student and recommend expulsion of the student:

- (1) Possessing, selling, or otherwise furnishing a firearm.
- (2) Brandishing a knife at another person.
- (3) Unlawfully selling a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.
- (4) Committing or attempting to commit a sexual assault as defined in subdivision (n) of Section 48900 or committing a sexual battery as defined in subdivision (n) of Section 48900.
- (5) Possession of an explosive.

[Ed Code sec. 48915(c)]

If a principal or the Superintendent determines that a student has committed any of the following acts at school or at a school activity off

school grounds, the Education Code requires that he or she recommend the expulsion of the student unless he or she determines that expulsion should not be recommended under the circumstances or that an alternative means of correction would address the conduct. With respect to offenses that fall under this provision, the Board believes that, except in extraordinary circumstances, alternative means of discipline and correction should be employed and expulsion should not be recommended.

- (1) Causing serious physical injury to another person, except in self-defense.
- (2) Possession of a knife or other dangerous object of no reasonable use to the pupil.
- (3) Unlawful possession of any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, except for either of the following:
 - (i) The first offense for the possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis.
 - (ii) The possession of over-the-counter medication for use by the pupil for medical purposes or medication prescribed for the pupil by a physician.
- (4) Robbery or extortion.
- (5) Assault or battery, as defined in Sections 240 and 242 of the Penal Code, upon any school employee.

[Ed Code sec. 48915(a)]

The law allows for expulsions for other offenses contained in section 48900 of the Education Code. However, except for the offenses listed in the two provisions (48915(c) and 48915(a)) above, or in extraordinary circumstances, neither a principal nor the Superintendent shall recommend the expulsion of a student.

In the event that a principal or the Superintendent recommends the expulsion of a student, the Director of Student Services shall commence the expulsion process, which may, depending on the circumstances, result in an administrative expulsion hearing, the termination of the expulsion proceedings, or an alternative resolution, such as restorative justice or a settlement with terms determined by the District and the accused student.

Suspended enforcement of expulsion orders

Under the law, the Board, upon voting to expel a student, may suspend the enforcement of the expulsion order for a period of up to, but not more

Comment [T2]: A concern was expressed that this provision encourages the District's representative to pursue an "innocent verdict." However, this provision deals only with whether an initial recommendation for an expulsion is made, not how an expulsion hearing will be resolved. The Ed Code expects that districts will **not** go forward with an expulsion recommendation for these offenses if there are alternative means of correction. This provision codifies the Board's desire to pursue alternative means of correction where possible, and to avoid adversarial expulsion hearings where possible.

than, one calendar year. The suspension of the expulsion order shall be accompanied by a **rehabilitation program** designed to further the student's academic progress, facilitate the student's understanding of the District's behavioral expectations and the harm caused by the student's behavior, repair the harm caused, and prevent a reoccurrence of the behavior.

Comment [TA3]: The AR will detail our inventory of rehabilitation programs.

[Ed Code section 48917(a); 80 Ops. Cal. Atty. Gen. 85 (Cal. A.G.)]

The Board shall suspend any expulsion order unless it is **uniquely inappropriate** to do so in the particular case.

Comment [T4]: There is currently no guidance for the Board in terms of when to suspend expulsion orders. While "uniquely inappropriate" is subjective, it does clarify the Board's intent and provides more guidance than under the status quo. The AR could elaborate if that seems useful.

Where the Board has suspended the enforcement of an expulsion order, the Board has the discretion to revoke the suspension of the expulsion order. The Board shall only exercise its discretion to reinstate an expulsion when the student has violated his or her rehabilitation program and when it is necessary to reinstate the expulsion to protect the safety of students and staff.

[Ed Code sec. 48917 (d).]

Duration of expulsions

The Education Code provides limits for the duration of an expulsion. The Board should impose expulsion terms that are shorter than the maximum duration whenever possible and appropriate given the unique circumstances of each case.

[Ed Code sec. 48916(a).]

Readmission

The expulsion order shall remain in effect until the Board orders the readmission of the student. The Board shall set a date, no later than the last day of the expulsion order, when the student shall be reviewed for readmission. Upon completion of the readmission process, the Board shall readmit the expelled student unless the Board makes a finding that the student poses an imminent danger to campus safety or to other students or employees of the District.

Comment [T5]: Question about the Board getting periodic progress reports on students on suspended expulsion. Suggestion: in AR, add provision for process where staff obtains periodic progress reports to check on whether the student is on track. The Board would not have to take any particular action.

Comment [T6]: Proposal to add "unless the Board makes a finding that the student **has not met the conditions of the rehabilitation plan** or continues to pose a danger to campus safety or to other students or employees of the district." Under this language, Board won't readmit if there is noncompliance with the rehab plan, even if the expulsion term is completed.

[Ed Code sec. 48916(c).]

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 services to students

Another alternative is to add language that makes it possible for Board to deny readmission if there's significant noncompliance with Rehab Plan, but makes clear that's not the preference.

OR leave as is, which provides for readmission, and continued education of the student, unless the Board believes readmission poses a danger.

facing expulsion and shall encourage them to avail themselves of such representation if available.

Extension of suspensions pending expulsion

Outside of the expulsion process, the maximum allowable duration of a suspension is five consecutive school days. However, when the expulsion process has commenced, the Superintendent or designee may extend the suspension pending the resolution of the expulsion process if certain, specific conditions are met. The extended suspension of a student pending expulsion proceedings 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 when required by law.

[Ed Code sec. 48911(a), (g).]

By law, the suspension of a student pending an expulsion hearing may not be extended unless the Superintendent or designee makes an express determination, following a meeting in which the student and the student's parents are invited to participate, that the presence of the student 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. Such a determination must be made on the basis of an individualized, case-specific analysis, in addition to the nature or seriousness of the alleged incident.

In making this determination, District staff shall, when possible, consult with the complainant (if any) and/or his or her parents or guardians. District staff shall also explore whether an agreement by the accused student to stay away from the complainant would alleviate the danger to persons or property or threat of disruption to the instructional process that the student's presence at his or her current school might pose. Such a stay-away agreement might result in the accused student having to temporarily change classes, temporarily withdraw from certain activities or sports, and/or temporarily withdraw from attending prom or other social activities.

[Ed. Code § 48911 (g).]

If the Superintendent or designee determines that the presence of the accused student at his or her school or in an alternative school placement would cause a danger to persons or property or a threat of disrupting the instructional process, the Superintendent or designee may then choose to extend the suspension pending the resolution of the expulsion proceedings. If that determination is made, it must be communicated in a **timely manner** to the student, in a **written document**

Comment [TA7]: Specific time frame will be in AR

Comment [TA8]: Create a new form, consistent with this policy, for extension of suspension pending expulsion for the AR.

that details the reasons, specific to the individual case, for the determination.

If a suspension is extended beyond five days, the student may appeal this decision to the Superintendent. If an appeal is requested, the Superintendent shall meet with the student and/or his or her parents or guardians in a timely manner. Following this meeting, the Superintendent has the discretion to reconsider the extension of the suspension.

Comment [TA9]: Detail this in the AR, but make it a simple procedure. Note that student can always appeal to the superintendent informally, and can also file a formal complaint. So this actually creates a simple straightforward process.

Comment [TA10]: Proposal to add: "The decision of the Superintendent shall be final." Although can't the student always file a uniform complaint since this doesn't supplant the complaint process?

If the suspension is not extended pending the resolution of the expulsion process, the student is subject to the District's general discipline policies throughout the duration of the expulsion process.

Instruction during extended suspension

The District shall ensure that any accused student whose suspension is extended pending an expulsion hearing is provided instruction during the period of extended suspension.

Comment [TA11]: By law, the district does not have to provide educational services for general education students pending expulsion.

Do we want to add "where feasible" since we haven't allocated resources for this yet?

How much instruction is the district willing to provide? We may want to clarify what the district is willing to do to manage expectations in advance.

Use of restorative justice or other alternative resolutions in expulsion cases

The Governing Board encourages the use of restorative justice in lieu of an expulsion hearing in appropriate cases that are referred 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 the reparation of the harm, learn from the consequences of behavioral choices, and continue to receive an education. A complainant shall never be required to participate in a restorative justice process, nor be pressured into doing so.

On a case by case basis, the Board encourages the resolution of expulsion cases through settlement agreements reached prior to any expulsion hearing or restorative justice, or both.

Comment [T12]: There is a question whether the district can legally settle a zero tolerance charge in a way that does not result in an expulsion recommendation and allows the student to remain in district programs. Should this language be revised to only apply to discretionary expulsion recommendations? Or can we spell out how this could work in a zero tolerance case consistent with the Ed Code?

Investigation of expulsion cases

The Board encourages a balanced, sensitive, trauma-informed approach to all investigations. District staff or the District's legal counsel should speak with all relevant witnesses, including witnesses identified by the accused student, the complainant (if any), and teachers. At all times the investigation should be conducted in a manner that protects the confidentiality of all students involved. Students shall not be questioned

for the purpose of investigating a school discipline matter by District staff or the District's legal counsel without first being provided with the opportunity to have an adult of their choice present during questioning.

Comment [TA13]:

Proposals re this language: a) delete it altogether. B) limit it to complainants, c) leave as is.

Any such investigation shall be independent from any police investigation.

Due process

A accused student facing expulsion has the right to fully and meaningfully confront the evidence against them and 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) allow for other witnesses to be called for an expulsion hearing at the accused student's request, under subpoena where necessary and allowed by law; 3) provide the accused student with all documents and evidence collected in the course of the case investigation (excluding attorney work product), including, but not limited to, any exculpatory evidence, and do so in a timely manner; 4) provide the accused student with a list of any and all witnesses the school intends to have testify at the hearing.

Comment [T14]: There is a question about whether, because personal notes are not student records, they should be turned over. This provision now revised to except attorney-work product but otherwise provide defense with investigative notes as a due process protective even if not required by Ed Code.

[Ed Code sec. 48918.]

Comment [T15]: Details can be in the AR, and the direction can be something along the lines of giving over the documents/evidence and names of witness when they become available.

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.

Complainant's Rights in the Expulsion Process

Complainants have the right to timely information about the expulsion process, so long as it does not impinge on the accused student's confidentiality or privacy. This information includes an explanation of a) the complainant's rights (including his or her rights to participate or not participate in the process), b) how to access appropriate counseling services, c) the timeline of any discipline process, and d) the resolution of any discipline process, consistent with the District's obligations to the confidentiality and privacy of the accused student. In addition, the Title IX Coordinator shall serve as the District contact for support for complainants in sexual harassment, battery, or assault cases and shall assist complainants in those cases with accessing available services.

Complainants also have the right to have an adult of their choice present during any questioning. The adult must be either a District employee or the complainant's parent or guardian, unless express parent/guardian consent is obtained for another adult to be present during questioning.

Prior to an expulsion hearing in which the complainant is also a student, the complainant shall be given five school days' notice before being called to testify, and shall be entitled to have up to two adult support persons, including, but not limited to, a parent, guardian, or legal counsel, present during his or her testimony. Before a complaining witness testifies, support persons shall be admonished that the hearing is confidential.

Comment [T16]: This is from the Ed Code. However per Ed Code, this requirement only applies to hearings where sexual battery is one of the charges. We are intentionally expanding this requirement to all complainants, regardless of the offense charged.

[Ed Code sec. 48918(b)(5).]

In all cases in which a complainant is called to testify in an expulsion hearing, the District shall provide a nonthreatening environment in order to enable the complainant to speak freely and accurately of the experiences that are the subject of the expulsion hearing, and to prevent discouragement of complaints.

[Ed Code sec. 48918.5(c).]

Regardless of whether he or she has filed a formal complaint, a complainant is a witness in any expulsion process, and is not a party to the expulsion process. The accused student and the District are the only formal parties in the expulsion process. For this reason, the role of the complainant is limited, and the complainant is not privy to the same information as the accused student. However, District staff should consult with the complainant and/or his or her parents or guardians throughout the expulsion process in an effort to ascertain the complainant's wishes about how to proceed and to provide information, when possible and without impinging on the accused student's confidentiality or privacy. Although the complainant may not dictate the course of the District's actions, District staff shall consider the complainant's wishes when determining how to proceed.

The administrative panel's role in the expulsion process

Any administrative panel appointed to hear an expulsion case shall be impartial and contain three or more certificated persons, none of whom is a member of the Board or employed on the staff of the school in which the accused student is enrolled. In the event that such an impartial panel cannot be appointed, the Board may hear the expulsion case in the first instance or it may contract with the county hearing officer or the Office of Administrative Hearings.

[Ed Code sec. 48918(d).]

The administrative panel shall determine if there is substantial evidence that the accused student engaged in each of the alleged offenses. The panel shall not make a determination as to guilt based on hearsay evidence alone.

[Ed Code sec. 48918(f)(2).]

If the panel determines that there is not substantial evidence or does not recommend expulsion, the accused student shall be readmitted in their instructional program from which the expulsion referral was made, unless there is a request by the accused students or his/her parent for another school placement. At that point, the expulsion process ends and the case does not proceed to the Board.

[Ed Code sec. 48918 (e)]

If the panel finds substantial evidence exists for an offense listed in Ed Code sec. 48915(c), the panel must recommend expulsion. The panel may recommend that the expulsion order be suspended and will provide factual information in its findings, adduced at the hearing, supporting its recommendation to the Board to suspend the enforcement of the expulsion order.

If the panel finds substantial evidence exists for an offense listed in Ed Code sec. 48915(a), the panel is not required to recommend an expulsion. If the panel does recommend expulsion, it has the discretion to recommend a suspended enforcement of the expulsion order if it so chooses.

Comment [T17]: Question whether under Ed Code panel has obligation to recommend expulsion if it finds substantial evidence.

The discretion to recommend a suspended enforcement of the expulsion order is available in every expulsion case.

The Board's role in the expulsion process

The administrative panel must submit a detailed, written factual finding to the Board explaining its reasoning for its decision. A copy of the panel's findings shall be provided to the accused student.

Comment [TA18]: Details in the AR, including provisions for training on writing findings of fact/conclusions of law, given the dissemination to the accused student.

The accused student shall have the opportunity to address the Board in closed session prior to the Board's decision.

Comment [T19]: Details in AR

The Board shall adopt the findings and recommendations of the administrative panel if it is persuaded that there is substantial evidence that the accused student engaged in the alleged offenses. The Board shall clearly indicate each of the alleged offenses for which it finds substantial evidence exists.

[Ed Code sec. 48918(h)(1).]

The Board may base its decision either upon a review of the findings of fact and recommendations of the administrative panel, or upon the results of any supplementary hearing the Board may order.

[Ed Code sec. 48918(f)(1).]

The Board shall not adopt a finding as to guilt based on hearsay evidence alone.

[Ed Code sec. 48918(f)(2).]

If the Board finds substantial evidence for an offense listed in Ed Code sec. 48915(c), the Board shall expel the accused student but may suspend enforcement of the expulsion order.

[Ed Code sec. 48918(f)(1), (h)(1).]

If the Board finds substantial evidence for an offense listed in Ed Code sec. 48915(a), the Board may vote to expel the accused student, suspend the enforcement of the expulsion order, or decline to expel the accused student. Where the Board finds substantial evidence but declines to expel the accused student, it may impose a responsibility plan that includes opportunities for the accused student to repair any harm caused and take responsibility for his or her actions.

[Ed Code sec. 48918(f).]

Training on and distribution of policy

District staff shall ensure that this policy is distributed to all site administrators and that training about how to implement this policy is provided to site administrators and all other school staff who are likely to be involved in investigating, or processing, serious school discipline cases.

District staff shall also ensure that this policy is distributed to all of its school sites and referenced in the Parent Student Handbook, with illustrative examples of student conduct and the possible consequences.

District staff shall ensure that all school safety plans are updated to include provisions and forms consistent with this policy.

MAY 12, 2016 DRAFT

Policy BERKELEY UNIFIED SCHOOL DISTRICT
adopted: XXXXX Berkeley, California

THIS IS A COMPARISON OF THE PREVIOUS DRAFT OF THE POLICY AND THE
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**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. Expulsion from school is an extreme and severe disruption of the educational process, and must be reserved for behavior that requires expulsion under the law or that poses a serious future threat to the safety of students or staff.

Definitions

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“Complainant” means the student who is the alleged victim of another student’s actions, regardless of whether a formal complaint has been filed.

Expellable offenses

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- (1) Possessing, selling, or otherwise furnishing a firearm.
- (2) Brandishing a knife at another person.
- (3) Unlawfully selling a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.
- (4) Committing or attempting to commit a sexual assault as defined in subdivision (n) of Section 48900 or committing a sexual battery as defined in subdivision (n) of Section 48900.
- (5) Possession of an explosive.

[Ed Code sec. 48915(c)]

If a principal or the Superintendent determines that a student has committed any of the following acts at school or at a school activity off

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school grounds, the Education Code requires that he or she recommend the expulsion of the student unless he or she determines that expulsion should not be recommended under the circumstances or that an alternative means of correction would address the conduct. With respect to offenses that fall under this provision, the Board ~~does not believe that~~, except in extraordinary circumstances, ~~believe that an expulsion recommendation is appropriate, and instead believes that~~ alternative means of discipline and correction should be employed and expulsion should not be recommended.

- (1) Causing serious physical injury to another person, except in self-defense.
- (2) Possession of a knife or other dangerous object of no reasonable use to the pupil.
- (3) Unlawful possession of any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, except for either of the following:
 - (i) The first offense for the possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis.
 - (ii) The possession of over-the-counter medication for use by the pupil for medical purposes or medication prescribed for the pupil by a physician.
- (4) Robbery or extortion.
- (5) Assault or battery, as defined in Sections 240 and 242 of the Penal Code, upon any school employee.

[Ed Code sec. 48915(a)]

~~Except~~ The law allows for expulsions for other offenses contained in section 48900 of the Education Code. However, except for the offenses listed in the two provisions (48915(c) and 48915(a)) above, or in extraordinary circumstances, neither a principal nor the Superintendent shall recommend the expulsion of a student.

In the event that a principal or the Superintendent recommends the expulsion of a student, the Director of Student Services shall commence the expulsion process, which may, depending on the circumstances, result in an administrative expulsion hearing, ~~a stipulated expulsion order~~, the termination of the expulsion proceedings, or an alternative resolution, ~~including such as restorative justice or a settlement~~ with terms determined by the District and the accused student.

Suspended ~~expulsion~~ enforcement of expulsion orders

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Under the law, the Board, upon voting to expel a student, may suspend the enforcement of the expulsion order for a period of up to, but not more than, one calendar year. The suspension of the expulsion order shall be accompanied by a rehabilitation program designed to further the student's academic progress, facilitate the student's understanding of the District's behavioral expectations and the harm caused by the student's behavior, repair the harm caused, and prevent a reoccurrence of the behavior.

[Ed Code section 48917(a); 80 Ops. Cal. Atty. Gen. 85 (Cal. A.G.)]

The Board shall suspend ~~the~~any expulsion ~~of any student whom the Board has expelled~~order unless it is uniquely inappropriate to do so in the particular case.

Where the Board has suspended the enforcement of an expulsion order, the Board has the discretion to revoke the suspension of the expulsion order. The Board shall only exercise its discretion to reinstate an expulsion when the student has violated his or her rehabilitation program and when it is necessary to reinstate the expulsion to protect the safety of students and staff.

[Ed Code sec. 48917 (d).]

Duration of expulsions

The Education Code provides ~~upper~~ limits for the duration of an expulsion. The Board should impose expulsion terms that are shorter than the maximum duration whenever possible and appropriate given the unique circumstances of each case.

[Ed Code sec. 48916(a).]

Readmission

The expulsion order shall remain in effect until the Board orders the readmission of the student. The Board shall set a date, no later than the last day of the expulsion order, when the student shall be reviewed for readmission. Upon completion of the ~~expulsion term~~readmission process, the Board shall readmit the expelled student, unless the Board makes a finding that the student poses an imminent danger to campus safety or to other students or employees of the District.

[Ed Code sec. 48916(c).]

Legal counsel for students facing expulsion

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

~~Advocates for complainants in expulsion cases~~

~~District staff shall make every effort to provide information about free victim advocacy services to complainants in expulsion cases and shall encourage complainants to avail themselves of such resources if available. In addition, the Title IX Coordinator shall serve as the District contact for support for complainants and shall assist complainants with accessing available services.~~

Extension of suspensions pending expulsion

Outside of the expulsion process, the maximum allowable duration of a suspension is five consecutive school days. However, when the expulsion process has commenced, the Superintendent or designee may extend the suspension pending the resolution of the expulsion process if certain, specific conditions are met. The extended suspension of a student pending expulsion proceedings 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 when required by law.~~

[Ed Code sec. 48911(a), (g).]

By law, the suspension of a student pending an expulsion hearing may not be extended unless the Superintendent or designee makes an express determination, following a meeting in which the student and the student's parents are invited to participate, that the presence of the student 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. Such a determination must be made on the basis of an individualized, case-specific analysis, ~~and cannot be based solely on~~ addition to the nature or seriousness of the alleged incident.

In making this determination, District staff shall, when possible, consult with the complainant (if any) and/or his or her parents or guardians. District staff shall also explore whether an agreement by the accused student to stay away from the complainant would alleviate the danger to persons or property or threat of disruption to the instructional process that the student's presence at his or her current school might pose. Such a stay-away agreement might result in the accused student having to

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temporarily change classes, temporarily withdraw from certain activities or sports, and/or temporarily withdraw from attending prom or other social activities.

[Ed. Code § 48911 (g).]

If the Superintendent or designee determines that the presence of the accused student at his or her school or in an alternative school placement would cause a danger to persons or property or a threat of disrupting the instructional process, the Superintendent or designee may then choose to extend the suspension pending the resolution of the expulsion proceedings. If that determination is made, it must be communicated in a timely manner to the student, in a written document ~~within two school days~~ that details the reasons, specific to the individual case, for the determination.

If a suspension is extended beyond five days, the student may appeal this decision to the Superintendent. If an appeal is requested, the Superintendent shall meet with the student and/or his or her parents or guardians ~~within five school days of the filing of the appeal.~~ in a timely manner. Following this meeting, the Superintendent has the discretion to reconsider the extension of the suspension.

If the suspension is not extended pending the resolution of the expulsion process, the student is subject to the District's general discipline policies throughout the duration of the expulsion process.

Instruction during extended suspension

The District shall ensure that any accused student whose suspension is extended pending an expulsion hearing is provided instruction during the period of extended suspension.

Use of restorative justice or other alternative resolutions in expulsion cases

The Governing Board encourages the use of restorative justice in lieu of an expulsion hearing in appropriate cases that are ~~referable~~ referred 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 the reparation of the harm, learn from the consequences of behavioral choices, and continue to receive an education. A complainant shall never be required to participate in a restorative justice process, nor be pressured into doing so.

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On a case by case basis, the Board encourages the resolution of expulsion cases through settlement agreements reached prior to any expulsion hearing or restorative justice, or both.

Investigation of expulsion cases

The Board encourages a balanced, sensitive, trauma-informed approach to all investigations. District staff or the District's legal counsel should speak with all relevant witnesses, including witnesses identified by the accused student, the complainant (if any), and teachers. At all times the investigation should be conducted in a manner that protects the confidentiality of all students involved. Students shall not be questioned for the purpose of investigating a school discipline matter by District staff or the District's legal counsel without first being provided with the opportunity to have an adult advocate of their choice present during questioning.

Any such investigation shall be independent from any police investigation.

Due process

A accused student facing expulsion has the right to fully and meaningfully confront the evidence against them and 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~~ allow for other witnesses to be called for an expulsion hearing at the accused ~~student's~~ student's request, under subpoena where necessary and allowed by law; 3) provide the accused student with all documents and evidence collected in the course of the case investigation, ~~(excluding attorney work product)~~, including, but not limited to, any exculpatory evidence, and do so in a timely manner; 4) provide the accused student with a list of any and all witnesses the school intends to have testify at the hearing.

[Ed Code sec. 48918.]

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.

Complainant's Rights in the Expulsion Process

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Complainants have the right to timely information about the expulsion process, so long as it does not impinge on the accused student's confidentiality-or privacy. This information includes an explanation of a) the complainant's rights (including his or her rights to participate or not participate in the process), b) how to access appropriate counseling services, c) the timeline of any discipline process, and d) the resolution of any discipline process, consistent with the District's obligations to the confidentiality and privacy of the accused student. In addition, the Title IX Coordinator shall serve as the District contact for support for complainants in sexual harassment, battery, or assault cases and shall assist complainants in those cases with accessing available services.

Complainants also have the right to have an adult advocate of their choice present during any questioning. The adult ~~advocate~~ must be either a District employee or the complainant's parent or guardian, unless express parent/guardian consent is obtained for another adult to be present during questioning.

Prior to an expulsion hearing in which the complainant is also a student, the complainant shall be given five school days' notice before being called to testify, and shall be entitled to have up to two adult support persons, including, but not limited to, a parent, guardian, or legal counsel, present during his or her testimony. Before a complaining witness testifies, support persons shall be admonished that the hearing is confidential.

[Ed Code sec. 48918(b)(5).]

In all cases in which a complainant is called to testify in an expulsion hearing, the District shall provide a nonthreatening environment in order to enable the complainant to speak freely and accurately of the experiences that are the subject of the expulsion hearing, and to prevent discouragement of complaints.

[Ed Code sec. 48918.5(c).]

Regardless of whether he or she has filed a formal complaint, a complainant is a witness in any expulsion process, and is not a party to the expulsion process. The accused student and the District are the only formal parties in the expulsion process. For this reason, the role of the complainant is limited, and the complainant is not privy to the same information as the accused student. However, District staff should consult with the complainant and/or his or her parents or guardians throughout the expulsion process in an effort to ascertain the complainant's wishes about how to proceed and to provide information, when possible and without impinging on the accused student's

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confidentiality or privacy. Although the complainant may not dictate the course of the District's actions, District staff shall consider the complainant's wishes when determining how to proceed.

The administrative panel's role in the expulsion process

Any administrative panel appointed to hear an expulsion case shall be impartial and contain three or more certificated persons, none of whom is a member of the Board or employed on the staff of the school in which the accused student is enrolled. In the event that such an impartial panel cannot be appointed, the Board may hear the expulsion case in the first instance or it may contract with the county hearing officer or the Office of Administrative Hearings.

[Ed Code sec. 48918(d).]

The administrative panel shall determine if there is substantial evidence that the accused student engaged in each of the alleged offenses. The panel shall not make a determination as to guilt based on hearsay evidence alone.

[Ed Code sec. 48918(f)(2).]

If the panel determines that there is not substantial evidence or does not recommend expulsion, the accused student shall be readmitted in their instructional program from which the expulsion referral was made, unless there is a request by the accused students or his/her parent for another school placement. At that point, the expulsion process ends and the case does not proceed to the Board.

[Ed Code sec. 48918 (e)]

If the panel finds substantial evidence exists for an offense listed in Ed Code sec. 48915(c), the panel must recommend expulsion. The panel may recommend that the expulsion order be suspended and will provide factual information in its findings, adduced at the hearing, supporting its recommendation to the Board to suspend the enforcement of the expulsion order.

If the panel finds substantial evidence exists for an offense listed in Ed Code sec. 48915(a), the panel is not required to recommend an expulsion. If the panel does recommend expulsion, it has the discretion to recommend a suspended enforcement of the expulsion order if it so chooses.

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The discretion to recommend a suspended enforcement of the expulsion order is available in every expulsion case.

The Board's role in the expulsion process

The administrative panel must submit a detailed, written factual finding to the Board explaining its reasoning for its decision. A copy of the panel's findings ~~must also~~shall be provided to the accused student.

The accused student shall have the opportunity to address the Board in closed session prior to the Board's decision.

The Board shall adopt the findings and recommendations of the administrative panel ~~only~~ if it is persuaded that there is substantial evidence that the accused student engaged in the alleged offenses. The Board shall clearly indicate each of the alleged offenses- for which it finds substantial evidence exists.

[Ed Code sec. 48918(h)(1).]

The Board may base its decision either upon a review of the findings of fact and recommendations of the administrative panel, or upon the results of any supplementary hearing the Board may order.

[Ed Code sec. 48918(f)(1).]

The Board shall not adopt a finding as to guilt based on hearsay evidence alone.

[Ed Code sec. 48918(f)(2).]

If the Board finds substantial evidence for an offense listed in Ed Code sec. 48915(c), the Board shall expel the accused student but may suspend enforcement of the expulsion order.

[Ed Code sec. 48918(f)(1), (h)(1).]

If the Board finds substantial evidence for an offense listed in Ed Code sec. 48915(a), the Board may vote to expel the accused student, ~~impose a suspended~~suspend the enforcement of the expulsion order, or decline to expel the accused student. Where the Board finds substantial evidence but declines to expel the accused student, it may impose a responsibility plan that includes opportunities for the accused student to repair any harm caused and take responsibility for his or her actions.

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[Ed Code sec. 48918(f).]

Expungement

~~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 expulsion and suspension.~~

~~Except where required by law, the District shall not provide student discipline information to any outside entity, including post-secondary educational institutions.~~

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

Training on and distribution of policy

District staff shall ensure that this policy is distributed to all site administrators and that training about how to implement this policy is provided to site administrators and all other school staff who are likely to be involved in investigating, or processing, serious school discipline cases.

District staff shall also ensure that this policy is distributed to all of its school sites and referenced in the Parent Student Handbook, with illustrative examples of student conduct and the possible consequences.

District staff shall ensure that all school safety plans are updated to include provisions and forms consistent with this policy.

Policy BERKELEY UNIFIED SCHOOL DISTRICT
adopted: XXXXX Berkeley, California

~~**Note: We need to couple this policy with minor revisions to BP 5144 to ensure there are no inconsistencies.**~~