

**Berkeley USD
Board Policy**

Expulsion

BP **XXXX**

Comment [TA1]: Notes: 1) This is the draft Board policy. Proposed administrative regulations (AR) will follow, and will contain the details for implementation. 2) We will need to make minor revision to BP 5144 to ensure there are no inconsistencies between that policy and this one. 3) We removed the expungement provisions of this policy because they are better suited to a standalone policy that addresses expungements of suspensions and expulsions. We will include it in the suite of policies related to discipline and student interventions.

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 agreed upon 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

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 [TA2]: 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 [T3]: Under the existing policy, there is 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 [T4]: There was a 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 [T5]: 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.

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.

From Public Counsel: "I would suggest that you leave this language as is. If there is a process outlined in the AR for periodic check-ins as to whether the student is on track with the Rehabilitation Plan, that offers an opportunity for staff to identify where there are issues with the student possibly failing to meet the conditions of the Plan, and to then modify the plan to better meet the needs of the student. With all of this in place, leaving the language as is makes the most sense from our end."

[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

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.

[Ed. Code § 48911 (g).]

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. The terms of any such agreement shall be shared with the complainant to the extent possible, so long as doing so does not impinge on the confidentiality or privacy of the accused student.

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** that details the reasons, specific to the individual student, 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.

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. To the extent possible without violating the accused student's rights to confidentiality and privacy, the complainant shall be informed of the accused student's status and whether or not the accused student is on campus.

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 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, including cases that require mandatory referral for expulsion, the Board encourages the resolution of expulsion cases through restorative justice or an alternative resolution process, instead of an adversarial expulsion hearing, settlement agreements reached prior to an expulsion hearing or restorative justice, or both.

Investigation of expulsion cases

Comment [TA6]: Specific time frame will be in AR

Comment [TA7]: Create a new form, consistent with this policy, for extension of suspension pending expulsion for the AR.

Comment [TA8]: 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 [TA9]: 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?

Public counsel: "Yes, the student/parent/guardian could file a uniform complaint (or any other kind of complaint such as an OCR complaint), so I don't think it makes sense to add that the decision of the Superintendent is final."

Comment [TA10]: 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?

Or b/c it is so few students, should we leave as is?

Public counsel: "I would suggest adding something to the effect of "including but not limited to the opportunity to complete required classwork, homework or other assignments, take required exams or other tests and generally complete the requirements of class so that the student has the opportunity to remain in good standing."

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.

Any such investigation shall be independent from any police investigation.

Due process

An 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.

[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

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

Comment [TA11]:

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

Comment from administrator: "Questioning without an adult present - I am not sure why this is included and is not something I would recommend. Often when students are accused of an expellable offense their family members can become very volatile. It seems it would make it more difficult to get a statement."

See below, which provides, "Complainants also have the right to have an adult of their choice present during any questioning."

Comment [T12]: 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.

Comment [T13]: 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.

Comment [TA14]: Public Counsel; "I have a question about district redaction policies: there have been issues in other districts around documents/evidence in expulsion hearings being so heavily redacted as to be impossible to understand and utilize. Obviously the district needs to comply with FERPA but that is weighed against the interest of the student in confronting complainant/witnesses. Does there need to be some description of how these documents will be redacted in a way that protects both interests? Could also be detailed in AR."

complainants in sexual harassment, battery, or assault cases and shall assist complainants in those cases with accessing available services.

Complainants alleging violations of Ed Code section 48900(n) are also entitled to all rights specified in Ed Code sections 48915(b)(5), 48915(c)(3), 48915(h)(2), and 48915.5.

Comment [TA15]: These are sexual assault/battery cases.

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 involving an alleged violation of Ed Code sec. 48900(n), 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

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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 or at which the event leading to the expulsion recommendation took place. 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. In all cases except those alleging a violation of Ed. Code sec. 48915 (c), the panel also must, before recommending expulsion, make a finding that either alternative means of correction are not feasible or have repeatedly failed to bring about proper conduct, or that due to the nature of the act, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.

[Ed Code sec. 48918(f)(2), 48915(b), (e).]

If the panel determines that there is not substantial evidence or does not recommend expulsion, the accused student shall be readmitted into the 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 expellable charged offense ~~listed in Ed Code sec. 48915(e)~~, the panel ~~must~~ may recommend expulsion. The panel may also recommend that the expulsion order be suspended and, if so, will ~~shall~~ 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 that the accused student committed any of the acts specified in Ed Code sec. 48915(c), but does not recommend expulsion, the accused student shall be immediately reinstated and may be referred to his or her prior school or another comprehensive school, or pursuant to the procedures set forth in Ed Code sec. 48432.5, the District's continuation school.

Comment [T17]: Public counsel: "I have a concern starting with this paragraph, through to the end of the next section (ending before the training section). For all but zero tolerance offenses, the panel and then the Board have to find not only that the offense took place but also that either or both that other means of correction have failed to bring about proper conduct and/or that due to the nature of the act the pupil causes continuing danger to the safety of the pupil or others. Those sections are not referenced in any of the rest of these two sections and are clear reasons that a panel/board may find not to expel. I think that these differences are properly differentiated by the code sections (i.e. for discretionary vs. mandatory offenses), but it seems like you would want to include something about these secondary findings, since they do apply to all but the mandatory zero tolerance cases."

Added language to address this point.

The panel's decision not to recommend expulsion shall be final.

~~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.~~

[Ed Code sec. 48918 (e)]

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 and/or the student's representative 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. 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(h)(1), 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. Whether or not the Board suspends enforcement of the expulsion order, the order shall be accompanied by a rehabilitation plan for the accused student.

Comment [TA20]: AR can address whether SARB or SARB-like process can develop and implement the rehabilitation plan. There is a concern about confidentiality with actually using SARB.

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

If the Board finds substantial evidence ~~for that the accused student committed any other an offense listed in Ed Code sec. 48915(a) expellable offense~~, the Board may vote to expel the accused student, suspend the enforcement of the expulsion order, or decline to expel the accused student. In all cases in which the Board decides to expel a student except those alleging a violation of Ed. Code sec. 48915 (c), the Board must make a finding that either alternative means of correction are not feasible or have repeatedly failed to bring about proper conduct, or that due to the nature of the act, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.

[Ed Code sec. 48915 (b) and (e).]

Where the Board finds substantial evidence but declines to expel the accused student, it may impose a rehabilitation 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.

Policy BERKELEY UNIFIED SCHOOL DISTRICT
adopted: XXXXX Berkeley, California