

**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 shall 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 fire arm.
- (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:

- (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).]

With respect to the above-listed offenses that fall under section 48915(a) of the Education Code, the Board believes that, except in extraordinary circumstances, alternative means of discipline and correction should be employed and expulsion should not be recommended.

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 referenced above (sections 48915(c) and 48915(a)), or in extraordinary circumstances, neither a principal nor the Superintendent shall recommend the expulsion of a student.

[Ed Code sec. 48900.]

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 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.

[Ed Code section 48917(a); 80 Ops. Cal. Atty. Gen. 85 (1997).]

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

Any suspended enforcement of an expulsion order shall be accompanied by a rehabilitation plan carefully tailored to the unique needs of the accused student, 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, ensure the safety of other students and staff, and prevent a reoccurrence of the behavior.

Where the Board has suspended the enforcement of an expulsion order, the Board has the discretion to revoke the suspended enforcement of the expulsion order. The Board shall only exercise its discretion to reinstate an expulsion order when it is necessary to protect the safety of students or staff.

[Ed Code sec. 48917(d).]

Duration of expulsions

The Education Code provides limits for the duration of an expulsion. The Board shall 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 and re-entry

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.

Where the Board has issued an expulsion order, the Board shall indicate in its order that successful compliance with the rehabilitation plan may result in early readmission.

Commented [TA1]: This provision was added at the direction of the Board at the June 1 meeting, so that there would be an incentive for students to comply with the provisions of the rehabilitation plan.

When the expulsion time period is expired, 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).]

The Superintendent or designee shall develop a re-entry plan to be implemented upon the accused student's re-entry, either back into the District after an expulsion, or back in to the student's previous school if the student was transferred as part of an order suspending the enforcement of an expulsion. The re-entry plan shall be carefully tailored to the unique needs of the accused student, designed to further the student's academic progress, facilitate the student's successful re-entry into the school environment, and ensure the safety of the complainant(s) (if any) and/or the school community.

Commented [TA2]: This provision was added at the direction of the Board at the June 1 meeting, so that there would be a re-entry plan for students coming off expulsions or coming back to their "home" school.

Legal counsel for students facing expulsion

From the beginning of the expulsion process, the Superintendent or designee 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 parent/guardian 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, the Superintendent or designee shall, when possible, consult with the complainant(s) (if any) and/or the complainant(s)' parent/guardian. The Superintendent or designee shall also explore whether an agreement by the accused student to stay away from the complainant(s) (if any) would alleviate the danger to persons or property or threat of disruption to the instructional process that the accused 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(s) (if any) to the extent possible, so long as doing so does not impinge on the confidentiality or privacy of the accused student. In addition, the Superintendent or designee shall create a safety plan for the complainant(s) (if any).

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 at any time during the extended suspension. If an appeal is requested, the Superintendent shall meet with the accused student and/or his or her parent/guardian 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 accused 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(s) (if any) 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 cases that are referred for expulsion, including cases that require mandatory referral for expulsion under Education Code section 48915(c). Restorative justice is, in many cases, more likely to repair harm to complainant(s) and likely to be less traumatic to complainant(s) 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 while avoiding an adversarial expulsion hearing. A complainant shall never be required to participate in a restorative justice process, nor be pressured into doing so.

In light of the Board's preference for alternative methods of resolution in lieu of expulsion hearings, the Superintendent or designee shall pursue, whenever possible and where appropriate, alternative processes on a case-by-case basis, including cases that require a mandatory referral for expulsion under Education Code section 48915(c). Such an alternative resolution could be achieved, for example, through an agreement with the accused student to waive the expulsion hearing timelines, proceed with a restorative justice (or alternative) process, and stipulate, if appropriate, to a suspended enforcement of the expulsion with consideration of early readmission and possible record expungement upon successful completion of that process. If the process is not successful, the District could then proceed with an expulsion hearing or other means of resolving the case that is consistent with the Education Code.

Commented [TA3]: Further detail on how this could be implemented has been added at the direction of the Board at its June 1 meeting.

Investigation of expulsion cases

The Superintendent or designee shall pursue a balanced, sensitive, trauma-informed approach to all investigations. District employees conducting investigations and/or the District's legal counsel shall speak with all relevant witnesses, including witnesses identified by the accused student, the complainant(s) (if any), and teachers. At all times the investigation shall be conducted in a manner that protects the confidentiality of all students involved to the extent legally possible.

If any student is questioned for the purpose of investigating a school discipline matter related to an expellable offense, that student's parent/guardian shall be notified that the questioning has occurred and the reason for the questioning. This notification shall occur as soon as possible but in no case later than the close of business on the day the questioning occurred, and all available methods of communication shall be utilized. If direct contact with the parent/guardian is not made on the day that the questioning occurred, all efforts shall be made to make direct contact with the parent/guardian as soon as practicable.

Commented [TA4]: This paragraph added at direction of the Board at the June 1 meeting.

No student shall be questioned for the purpose of investigating a school discipline matter by the District's legal counsel without first notifying the parent/guardian and offering them the opportunity to be present during questioning. If the parent/guardian cannot be present during questioning by the District's legal counsel, the student shall have the opportunity to have an adult of his or her choosing present during questioning.

Any such investigation shall be separate and independent from any law enforcement investigation.

Due process

Accused students facing expulsion have 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 District 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(s) (if any), to the extent possible and without violating the confidentiality of the complainant(s) or the accused student.

Complainants' Rights in the Expulsion Process

Complainants generally have the right to timely information about expulsion proceedings that pertain to their safety and access to academic and extra-curricular offerings, as well as information that would reasonably influence their decisions regarding further contact with accused students. So long as the provision of this information does not violate the District's obligations to the confidentiality and privacy of the accused student, 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 and academic accommodations, c) the timeline of any discipline process, d) the resolution of any discipline process, and e) how to access any available resources, of which the Superintendent or designee is aware, for confidential support and guidance throughout the process.

[Family Educational Rights and Privacy Act (FERPA) Regulations, 34 CFR sec. 99.30, 99.31.]

In addition, the Title IX Coordinator shall serve as the District contact for support for complainants in sexual harassment, sexual battery, or sexual assault cases and shall assist complainants in those cases with accessing available services. Complainants alleging violations of Education Code section 48900(n) are also entitled to all rights, relevant to the charge, specified in Education Code sections 48918(b)(5), 48918(c)(3), 48918(h)(2), and 48918.5.

Prior to an expulsion hearing in which a 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 of his or her choosing present during his or her testimony. Three adult support persons may be allowed at the discretion of the Superintendent or designee, so long as at least one is a parent/guardian. 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 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(s) (if any) is limited, and a complainant is not privy to the same information as the accused student. However, the Superintendent or designee should consult with the complainant(s) (if any) and/or his or her parent/guardian 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 a complainant may not dictate the course of the District's actions, the Superintendent or designee shall consider the complainant's wishes when determining how to proceed.

[Family Educational Rights and Privacy Act (FERPA) Regulations, 34 CFR sec. 99.30, 99.31.]

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 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 Education Code section 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 accused student causes a continuing danger to the physical safety of the accused student 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 expulsion process ends and the case does not proceed to the Board. The accused student shall immediately be readmitted into the instructional program from which the expulsion referral was made, unless there is a request by the accused student or his/her parent/guardian for another school placement.

[Ed Code sec. 48918(e).]

If the panel finds substantial evidence exists for an expellable charged offense, the panel may recommend expulsion. The panel may also recommend that the enforcement of the expulsion order be suspended and, if so, 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 Education 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 Education Code section 48432.5, the District's continuation school.

[Ed Code sec. 48918(e).]

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

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

The administrative panel shall 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.

The Board's role in the expulsion process

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

If the Board finds substantial evidence for an offense listed in Education 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 that the accused student committed an expellable offense other than an offense listed in Education Code section 48915(c), 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 Education Code section 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), (e).]

The Board's decision to expel a student shall be based only upon a review of the findings of the administrative panel, or upon the results of any supplementary hearing the Board may order. Although the Board may consider comments made by an accused student or his/her representative during closed session in deciding not to expel an accused student, no student may be expelled on the basis of comments made by that student or his/her representative in closed session.

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

Where the Board finds substantial evidence but declines to expel the accused student, it may direct the Superintendent or designee to create a plan that includes opportunities for the accused student to repair any harm caused and take responsibility for his or her actions.

Students with Individual Education Plans (IEPs) and Section 504 plans

Nothing in this Policy shall be construed to limit in anyway the rights of students with Individual Education Plans (IEPs) and Section 504 Plans that are provided in the Education Code and in federal law.

Where an accused student has an IEP or Section 504 Plan, the District shall ensure that he or she is provided sufficient support during the disciplinary process and that any rehabilitation, readmission, and re-entry plans are carefully tailored to account for the accused student's disabilities and unique needs.

[20 U.S.C.A. sec. 1415; 29 U.S.C. § 794 (Section 504).]

Commented [TA5]: This reference to Special Education students was added at the direction of the Board at the June 1 meeting.

Regular reporting

Commented [TA6]: This provision added at the direction of the Board at the June 1 meeting.

On a quarterly basis, the Superintendent or designee shall report to the Board the number of students who are currently being referred for expulsion, the number of students who are serving or have served since the most recent report a suspension longer than five days, and the number of students currently serving expulsions, including suspended expulsions. This report shall include relevant demographic information for each of these students, to the extent that the demographic data does not disclose confidential student information.

Training on and distribution of policy

The Superintendent or designee 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.

The Superintendent or designee 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.

The Superintendent or designee shall ensure that all school safety plans are updated to include provisions and forms consistent with this policy.

Existing Board Policy and Administrative Regulations

Until such time as Board Policy 5144.1 (Suspension and Expulsion / Due Process) and Administrative Regulation 5144.1 (Suspension and Expulsion / Due Process) are revised, their provisions shall remain in effect to the extent they are not inconsistent with this Policy.

Policy BERKELEY UNIFIED SCHOOL DISTRICT
adopted: June 29, 2016 Berkeley, California