

**Berkeley USD
Board Policy**

Confidentiality and Expungement of Discipline Records

BP XXXX

Definitions

To “expunge” a record means to remove and destroy hard copy and electronic versions of the record from a student’s cumulative academic file. An expunged record will therefore not be available for anyone to access, even by court order.

In the context of juvenile delinquency records that are expunged, state law provides that “the arrest and other proceedings in the case shall be deemed not to have occurred and the person who was the subject of the petition may reply accordingly to an inquiry by employers, educational institutions, or other persons or entities regarding the arrest and proceedings in the case.” Cal. Wel. & Inst. Code § 786(b).

Similarly, in the context of school disciplinary records, when a record has been expunged, the facts leading to the disciplinary action shall be deemed not to have occurred and the student may reply accordingly to an inquiry by employers, educational institutions, or other persons.

“Student” means the student who was the subject of disciplinary action.

Confidentiality of Discipline Records

Except where a District Petition (as set forth in this policy) has been granted, no District employee shall reveal any student’s disciplinary records or information to any agency, organization, or institution, including higher education institutions, without a court order or authorized release from the student or a student’s legal guardian, except as provided by section 49076 of the California Education Code.

Notwithstanding this provision, the District may provide a student’s disciplinary record to another K-12 district pursuant to section 49076 of the California Education Code if the student is transferring to that district, unless the student has successfully petitioned for discretionary expungement per this policy.

Notwithstanding this provision, the District shall inform teachers of their students’ prior disciplinary records as required by California Education Code 49079.

Comment [A1]: NOTE: In practice, a court will automatically dismiss less serious cases in juvenile delinquency court and seal a juvenile record if an individual has satisfactorily completed “(1) an informal program of supervision pursuant to Section 654.2, (2) probation under Section 725, or (3) a term of probation for any offense.” Cal. Wel. & Inst. Code § 786(a).

Even for more serious cases in juvenile delinquency court (those that fall under California’s Welfare & Institutions Code section 707(b)) an individual may petition the court to dismiss the case under section 781 and then seal the juvenile record under section 786(a). See Cal. Wel. & Inst. Code §§ 781, 786(a).

Comment [A2]: NOTE: The common application for college admission asks:

- 1) Have you ever been found responsible for a disciplinary violation at any educational institution you have attended from the 9th grade (or the international equivalent) forward, whether related to academic misconduct or behavioral misconduct that resulted in a disciplinary action? These actions could include, but are not limited to: probation, suspension, removal, dismissal, or expulsion from the institution.
- 2) Have you ever been adjudicated guilty or convicted of a misdemeanor or felony? Note that you are not required to answer “yes” to this question, or provide an explanation, if the criminal adjudication or conviction has been expunged, sealed, annulled, pardoned, destroyed, erased, impounded, or otherwise required by law or ordered by a court to be kept confidential.

Automatic Expungement

The Superintendent or designee shall expunge all files pertaining to a disciplinary record as noted in a student's cumulative academic immediately upon the student's graduation from high school or its equivalent. At the time of the expungement, the student shall be notified about the rights students have and the duties schools have with respect to expunged records.

If a student completes a General Equivalency Diploma (GED) or the California High School Proficiency Exam (CHSPE), the student may inform the District of such completion, at which time the District will immediately expunge the student's disciplinary records and notify the student that the records have been expunged. This notification shall include information about the rights students have and the duties schools have with respect to expunged records.

Comment [A3]: NOTE: We will need to spell out either here or in an AR what the policy is for adult GED recipients at the Adult School, many of whom attended other districts or BUSD a long time ago.

Discretionary Expungement

Within the discretion of the Board, a student or a student's guardian may request a complete or partial expungement of disciplinary records at any point prior to graduation from high school or equivalent if the student can demonstrate evidence of progress in the area of personal responsibility and/or positive behavior, as well as evidence of progress toward a high school degree or equivalent.

The Superintendent or designee shall ensure that high school students applying to college with disciplinary records are informed of their right to seek discretionary expungement and the procedures for doing so.

District Petition

The Superintendent or designee may, at any time prior to a student's graduation from high school, petition the Board to keep a disciplinary record in a student's cumulative file. The student has the right to be heard before the Board decides whether to grant the Superintendent or designee's petition. In deliberation of the petition, the Board must consider whether the benefits to public safety of keeping a disciplinary record in a student's cumulative academic file substantially outweigh the benefits to the student of expungement of the conduct in question.