

To: Policy Subcommittee
From: Ty Alper and Susan Craig
Date: May 4, 2016
Re: BP re Expulsions

Attached is a clean revised draft policy governing expulsions, with a few comments 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 April 8, 2016 meeting.

We are grateful for the input from many community partners who provided input on the previous drafts. We look forward to discussing the latest draft at the May 4 meeting. We also provide here our proposed timeline for the adoption of this policy. Our view is that we should seek Board approval of the policy before the end of this school year, and then, if the Board approves the policy, turn to the AR for this policy over the summer and in the early fall.

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.

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
5/20/16	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
6/17/16	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

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 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 does not, except in extraordinary circumstances, believe that an expulsion recommendation is appropriate, and instead believes that alternative means of discipline and correction should be employed.

- (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 for the offenses listed in the two provisions 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 settlement.

Suspended expulsions

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

Where the Board has suspended an expulsion, the Board has the discretion to revoke the suspension of the expulsion. 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

Upon completion of the expulsion term, the Board shall readmit the expelled student.

[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.

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

Comment [TA1]: The Ed Code is somewhat confusing on this point, and appears to allow a District to, de facto, extend an expulsion beyond the maximum, and/or beyond the originally contemplated expulsion term. However, the legality of this is questionable. To discuss: where we want to strike the balance here? Do we want to add a sentence along the lines of "The Board shall not deny readmission following an expulsion term unless readmission will pose a serious danger to students or staff?" Do we clarify that if an expelled student commits another offense, the existing disciplinary process can be invoked?

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.

[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 the nature or seriousness of the alleged incident.

Comment [TA2]: Detail in AR how to get transferred to BTA

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, withdraw from certain activities or sports, and/or 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 to the student in a written document within two school days that details the reasons, specific to the individual case, for the determination.

Comment [3]:
Write new form for AR.

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. Following this meeting, the Superintendent has the discretion to reconsider the extension of the suspension.

Comment [TA4]: Detail this in the AR, but make it a simple procedure.

Comment [TA5]: What are consequences of failure to meet deadlines?

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 appropriate cases that are referable for expulsion, including cases that require mandatory referral for expulsion. Restorative justice is, in many cases, more likely to repair harm to the complainant and likely to be less traumatic to the complainant than an adversarial expulsion hearing. It also allows for the student offender to play an active role in 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.

Comment [TA6]: The AR will spell out how this can happen consistent with the ed code timelines etc.

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 by District staff or the District's legal counsel without first being provided with the opportunity to have an adult advocate 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 for an expulsion hearing at the accused student's request; 3) provide the accused student with all documents and evidence collected in the course of the case investigation, 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 [TA7]: Include details of discovery etc in the AR.

[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. Complainants also have the right to have an adult advocate 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.

Comment [TA8]: Include details in AR

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 confidentiality. 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

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 finds substantial evidence for an offense listed in Ed Code sec. 48915(c), the panel must recommend expulsion. The panel may recommend that the expulsion be suspended.

If the panel finds substantial evidence 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 expulsion if it so chooses.

The discretion to recommend a suspended expulsion 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 be provided to the accused student.

Comment [TA9]: Details in the AR

The Board shall adopt the findings of the administrative panel only if it is persuaded that there is substantial evidence that the accused student engaged in each of the alleged offenses.

[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 the expulsion.

[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 expulsion, 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).]

Expungement

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

MAY 4, 2016 DRAFT

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.

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.

Comment [TA10]: Can we automatically expunge the fact of the expulsion – so students applying to college don't have to "check the box" – but keep the facts on file to comply with Ed Code re notifying teachers, and to ensure that previous incidents are known if the same student is involved in a subsequent incident?

Comment [TA11]: Details in AR

[NOTE: THIS DOCUMENT SHOWS THE REVISIONS THAT WERE MADE TO THE VERSION OF THE POLICY THAT WAS DISCUSSED AT THE APRIL 8, 2016 POLICY SUBCOMMITTEE MEETING.]

**Berkeley USD
Board Policy**

Expulsion

BP XXXX

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

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

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

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

- (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 for the offenses listed in the two provisions 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 settlement.

Suspended expulsions

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

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

Where the Board has suspended an expulsion, the Board has the discretion to revoke the suspension of the expulsion. 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

Upon completion of the expulsion term, the Board shall readmit the expelled student.

[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 ~~counsel~~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 ~~advocates~~advocacy services to complainants in expulsion cases and shall encourage ~~them~~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

~~The extended suspension of a student pending an expulsion hearing~~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. By law, the suspension of a student pending an expulsion hearing shall not be extended unless the "presence of the pupil at the school or in an alternative school placement would cause a danger to persons or property or a threat of disrupting the instructional process." ~~Ed. Code § 48911.~~

~~Before seeking to extend~~ [Ed Code sec. 48911(a), (g).]

By law, the suspension of a student pending expulsion 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 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 alternative school placement, or an agreement by the accused student to stay away from the complainant at the current school, 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, withdraw from certain activities or sports, and/or withdraw from attending prom or other social activities.

[Ed. Code § 48911 (g).]

If District staff the Superintendent or designee determines that the presence of a the accused student awaiting an expulsion hearing at his or her school or in an alternative school placement would cause a danger to persons or property, or threaten to disrupt a threat of disrupting the educational instructional process, the appropriate District official shall make the request in writing to the Superintendent. The written request must include the reasons for the requested extension of or designee may then choose to extend the suspension, as well as an explanation pending the resolution of why an alternative the expulsion proceedings. If that determination is made, it must be communicated to the student in a written document within two school placement, or an agreement days that details the reasons, specific to stay away from the complainant at the current school, would not alleviate the danger posed by the student's presence at his or her school individual case, for the determination.

TheIf a suspension shall not be is extended unless beyond five days, the student may appeal this decision to the Superintendent agrees to the request in writing. [Say the maximum amount. 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 time the appeal. Following this meeting, the Superintendent has the discretion to reconsider the extension of the suspension can last, with citation to ed code?].

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

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

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

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

Investigation of expulsion cases

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

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 by District staff or the District's legal counsel without first being provided with the opportunity to have an adult advocate 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 for an expulsion hearing at the accused student's request; 3) provide the accused student with all documents and evidence related to collected in the course of the case investigation, 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. Complainants also have the right to have an adult advocate 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 confidentiality. 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

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 finds substantial evidence for an offense listed in Ed Code sec. 48915(c), the panel must recommend expulsion. The panel may recommend that the expulsion be suspended.

If the panel finds substantial evidence 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 expulsion if it so chooses.

The discretion to recommend a suspended expulsion is available in every expulsion case.

The Board's role in the expulsion process

~~[Add provision here]~~ The administrative panel must submit a detailed, written factual finding to the Board explaining what the Board's role is in the expulsion process, what its reasoning for its decision. A copy of the

panel's findings must also be provided to the standard of review is for the accused student.

The Board to review shall adopt the findings of the administrative panel, what only if it is persuaded that there is substantial evidence that the accused student engaged in each of the Board's options are, alleged offenses.

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

The Board may base its decision either upon a review of the findings of fact and what the threshold requirements are 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 the Board's various options, an offense listed in Ed Code sec. 48915(c), the Board shall expel the accused student but may suspend the expulsion.

[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 expulsion, 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).]

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 the 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 ~~of higher education.~~

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

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.