

AR 5144.3

This AR provides the implementing regulations for BP 5144.3. These regulations govern expulsions, whereas AR 5144.1 governs both suspensions and expulsions. It supersedes AR 5144.1, the provisions of which apply only to the extent they are not inconsistent with these regulations. This AR is not intended to repeat the provisions of the governing Board Policy, nor is it intended to detail applicable provisions of the Education Code, except where necessary for clarification.

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.

“Day” means a calendar day unless otherwise specifically provided.

“School day” means a day upon which the schools of the district are in session or weekdays during the summer recess.

“Superintendent’s designee” means one or more administrators designated by the Superintendent to assist with disciplinary procedures.

“Principal’s designee” means one or more administrators or, if there is not a second administrator at one school site, a certificated person specifically designated by the principal, in writing, to assist with disciplinary procedures. Only one such person may be designated at any time as the principal’s primary designee and only one such person may be designated as secondary designee for the school year. The names of such persons shall be on file in the principal’s office.

Expellable offenses

The legal grounds for expulsion are listed in the Education Code. The Board’s direction with respect to how different alleged offenses are to be treated is detailed in BP 5144.3.

[Ed Code sec. 48915(c), 48915(a), 48900.]

Suspended enforcement of expulsions orders

Board policy requires that the Superintendent or designee ensure that any suspended enforcement of an expulsion order is accompanied by a

rehabilitation plan carefully tailored to the individual 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.

The plan should take into account the individual capacity of the accused student in complying with the rehabilitation terms, including, but not limited to, any learning disability or other disabilities. The plan should also account for the accused student's ability to access the resources necessary to complete the rehabilitation plan.

[BP 5144.3]

If appropriate, the Superintendent or designee should make use of the Student Attendance Review Board (SARB) to craft an appropriate rehabilitation plan that meets the requirements as set forth in the Board policy.

The rehabilitation plan shall be accompanied by written and oral indication to the accused student that successful completion of the rehabilitation plan may result in early readmission. The Superintendent or designee shall make clear to the accused student how he or she may apply for early readmission and under what circumstances the Superintendent or designee may recommend, and the Board may approve, early readmission.

Readmission and re-entry

On the date set by the Board when it ordered the expulsion, the district shall consider readmission of the student.

The Superintendent or designee shall transmit to the Board his/her recommendation regarding readmission, and shall provide a copy of the recommendation and supporting documentation to the accused student. The Board shall consider this recommendation in closed session if information would be disclosed in violation of Education Code [49073-49079](#). If a written request for open session is received from the parent/guardian or adult student, it shall be honored.

The Board shall afford the accused student and/or his/her representative an opportunity to address the Board for 10 minutes, which time may be extended at the discretion of the Board President.

If the readmission is granted, the Superintendent or designee shall notify the student and parent/guardian immediately of the Board's decision regarding readmission.

When an accused student re-enters his or her home school, or the District, Board policy requires the Superintendent or designee to design a re-entry plan to facilitate the student's successful re-entry into the school environment. The re-entry plan should be carefully tailored to the unique needs of the accused student, designed to further the student's academic progress, and ensure the safety of the complainant(s) (if any) and/or the school community. Such a plan should include re-entry circles at any school site that has established restorative practices.

[BP 5144.3]

Legal counsel for students facing expulsion

At the earliest possible moment that the Superintendent or designee is aware that a student may face expulsion proceedings, the Superintendent or designee shall inform the accused student and his or her parent/guardian of any free legal counsel of which the District is aware. The Superintendent or designee shall provide to the student and his or her parent/guardian the name, phone numbers, office address, and email addresses of any such legal counsel, and shall encourage the student and his or her parent/guardian to secure free legal counsel.

If the Superintendent or designee is aware of an office or agency that provides free legal counsel to students facing expulsion, the Superintendent or designee shall, with consent of the accused student's parent/guardian, provide the student's contact information to such agency or office in order to facilitate the provision of free representation to the student facing expulsion.

Extension of suspensions pending expulsion

The process for determining whether a suspension should be extended pending expulsion is detailed in Board Policy 5144.3.

Instruction during extended suspension

Pursuant to Board Policy, 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.

In order to effectuate this policy, the Superintendent or designee shall ensure that procedures are in place to provide appropriate and comparable instruction for students serving extended suspensions.

Use of restorative justice or other alternative resolutions in expulsion cases

Board policy encourages the use of restorative justice and alternative resolutions in lieu of expulsion hearings, even in the most serious cases, including cases of sexual assault and sexual battery.

Restorative justice in cases of sexual harm requires particularly sensitive and experienced facilitation. Restorative justice practitioners facilitating sexual harm cases should have training and/or experience with those directly impacted by sexual harm, preferably both with victims/survivors and people who have committed acts of sexual harm. They must understand the potential power dynamics involved in sexual violence. Moreover, practitioners must be able to centralize survivor-identified needs while facilitating processes that hold the responsible youth accountable to these needs.

Where the District has contracted with experienced restorative justice practitioners, and where the Superintendent or designee believes that restorative justice may be a desirable process to pursue, the Superintendent or designee shall refer the complainant to the restorative justice practitioner for that practitioner to more fully explain what such a process would entail. The Superintendent or designee shall also, with consent of the complainant's parent/guardian, provide the complainant's contact information to such practitioner in order to facilitate the introduction of the restorative justice concept to the complainant.

Investigation of expulsion cases

The process for investigation of expulsion cases is detailed in Board Policy 5144.3.

Due process

As detailed in the relevant Board Policy, accused students facing expulsion have a right to fully and meaningfully confront the evidence against them and present their defense at an expulsion hearing.

[BP 5144.3.]

With respect to timing of any expulsion hearing, the accused student is generally entitled to a hearing that is held within 30 school days after the principal or Superintendent or designee determines that an expellable offense has occurred.

[Ed Code sec. 48918.]

The accused student is entitled to one postponement of an expulsion hearing for a period of not more than 30 calendar days. The request for postponement

shall be in writing. Any subsequent postponement may be granted at the Board President's discretion.

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

An accused student may waive the timelines provided for in the Education Code and in these regulations in order to, for example, participate in a restorative justice process.

The Education Code details the grounds for potential postponement of the expulsion hearing for reasons related to the school calendar.

[Ed Code sec. 48918(a).]

Written notice of the hearing shall be forwarded to the accused student and the accused student's parent/guardian at least 10 calendar days before the date of the hearing.

The notice shall include:

1. The date and place of the hearing;
2. A statement of the specific facts, charges and offense upon which the proposed expulsion is based, including all documents and evidence collected in the course of the case investigation (excluding attorney work product), including but not limited to exculpatory evidence;
3. A statement informing the accused student of his/her right to have teachers of his/her choice testify in support of the accused student and of the right to call other witnesses who have relevant testimony to provide;
4. A list of any and all witnesses the District intends to have testify at the hearing;
5. All records and statements that the District intends to rely on at the hearing;
6. A copy of district disciplinary rules which relate to the alleged violation;
7. Notification of the accused student's or parent/guardian's obligation, pursuant to Education Code [48915.1](#), to provide information about the student's status in the district to any other district in which the student seeks enrollment.

This obligation applies when a student is expelled for acts other than those described in Education Code [48915](#)(a) or (c).

8. The opportunity for the student or the student's parent/guardian to appear in person or be represented by legal counsel or by a nonattorney advisor. Legal counsel means an attorney or lawyer who is admitted to the practice of law in California and is an active member of the State Bar of California. Nonattorney advisor means an individual who is not an attorney or lawyer, but who is familiar with the facts of the case, and has been selected by the student or student's parent/guardian to provide assistance at the hearing.

9. The opportunity to confront and question all witnesses who testify at the hearing.

10. The opportunity to question all evidence presented and to present oral and documentary evidence on the student's behalf, including witnesses.

[BP 5144.3; Ed Code sec 48918(b).]

Complainants' Rights in the Expulsion Process

As detailed in the Board Policy, complainants generally have the right to timely information about expulsion proceedings that pertain to their safety and access to academic and extracurricular 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.

[BP 5144.3.]

Whenever the Superintendent or designee recommends an expulsion hearing that addresses allegations of sexual assault or sexual battery, he/she shall provide the complainant with a copy of the applicable disciplinary rules and advise the complainant of his/her right to:

1. Receive five days' notice of his/her scheduled testimony at the hearing;
2. Have up to two adult support persons of his/her choosing present in the hearing at the time he/she testifies (or three at the discretion of the Superintendent or designee, so long as one is a parent/guardian); and
3. Have a closed hearing during the time he/she testifies.

[Ed Code sec. 48915.5(a).]

Whenever any allegation of sexual assault or sexual battery is made, the Superintendent or designee shall immediately advise complainants and accused students to refrain from personal or telephone contact with each other during the time when an expulsion process is pending.

Conduct of the expulsion hearing

As a general matter, administrative panels will be appointed to hear expulsion cases in lieu of the Governing Board. Board Policy details the role of the administrative panel in the expulsion hearing process.

[BP 5144.3.]

When constituting the Administrative Panel, the Superintendent or designee shall appoint an impartial panel composed of three or more certificated personnel, none of whom shall be members of the Board or on the staff of the school in which the student is enrolled. The Superintendent or designee shall provide the panelists prior to the hearing with the names of the accused student and complainant (if any), in order to determine whether each of the panelists is capable of fairly and impartially sitting on the panel.

[Ed Code sec. 48919.5(a).]

Notwithstanding the provisions of Government Code [54953](#) and Education Code [35145](#), the Administrative Panel shall conduct a hearing to consider the expulsion of the student in a session closed to the public unless the student requests in writing at least five days prior to the hearing that the hearing be a public meeting.

If a hearing that involves a charge of sexual assault or sexual battery is to be conducted in public, a complaining witness shall have the right to have his/her testimony heard in closed session when testifying in public would threaten serious psychological harm to the witness and when there are no alternative procedures to avoid the threatened harm, including but not limited to videotaped deposition or contemporaneous examination in another place communicated to the hearing room by closed-circuit television.

A record of the hearing shall be made and may be maintained by any means, including electronic recording, as long as a reasonably accurate and complete written transcription of the proceedings can be made. In the event that the Board votes to expel an accused student, the recording of the expulsion hearing shall be provided at no cost to the accused student.

Before commencing a student expulsion hearing, the Administrative Panel may issue subpoenas, at the request of either the student or the Superintendent or designee, for the personal appearance at the hearing of any person who actually witnessed the action that gave rise to the recommendation for expulsion. After the hearing has commenced, the Administrative Panel may issue such subpoenas at the request of the student or the County Superintendent of Schools or designee. All subpoenas shall be issued in

accordance with the Code of Civil Procedure [1985-1985.2](#) and enforced in accordance with Government Code [11455.20](#) (formerly 11525).

While technical rules of evidence do not apply to expulsion hearings, evidence may be admitted and used as proof only if it is the kind of evidence on which reasonable persons can rely in the conduct of serious affairs.

Findings of fact shall be based solely on the evidence at the hearing. While no finding shall be based solely on hearsay, sworn declarations may be admitted as testimony from witnesses whose disclosure of their identity or testimony at the hearing may subject them to an unreasonable risk of physical or psychological harm. In cases where a search of a student's person or property has occurred, evidence describing the reasonableness of the search shall be included in the hearing record.

Board Policy requires that a copy of the administrative panel's findings shall be provided to the accused student. If the administrative panel's recommendation proceeds to the Board for review, the accused student shall be provided, prior to the Board's consideration, the complete documentation on the accused student's case that is provided to the Board.

The Board's role in the expulsion process

The Board's role in the expulsion process is detailed in Board Policy 5144.3.

Instead of employing an Administrative Panel, the Board may hear an expulsion hearing itself or it may contract with the county hearing officer or with the Office of Administrative Hearings of the State of California for a hearing officer. A hearing conducted by the Board shall conform to the same procedures as apply to a hearing conducted by an Administrative Panel.

Prior to discussing an expulsion case in closed session, the Board shall afford the accused student and/or the accused student's representative an opportunity to address the Board. The accused student and/or representative shall have a total of 10 minutes to address the Board, which time may be extended at the discretion of the Board President.

Final Action by the Board

Whether the expulsion hearing is conducted in closed or public session by the Board, a hearing officer, or an administrative panel, the final action to expel shall be taken by the Board at a public meeting. The Superintendent or designee shall inform the accused student immediately of the Board's decision.

If the Board conducts the hearing and reaches a decision not to expel, this decision shall be final and the student shall be reinstated immediately.

Written Notice to Expel

The Superintendent or designee shall send written notice of the decision to expel to the accused student or parent/guardian. This notice shall include the following:

1. The specific offense committed by the accused student for any of the causes for suspension or expulsion listed in Education Code [48900\(a\)-\(p\)](#), Education Code [48900.2-48900.4](#) and Education Code [48915\(c\)](#);
2. The fact that a description of readmission procedures will be made available to the accused student and his/her parent/guardian;
3. Notice of the right to appeal the expulsion to the County Board of Education;
4. Notice of the alternative educational placement to be provided to the accused student during the time of expulsion; and
5. Notice of the accused student's or parent/guardian's obligation to inform any new district in which the student seeks to enroll of the student's status with the expelling district, pursuant to Education Code [48915.1](#).

[Ed Code sec ____]

Right to Appeal

The Superintendent or designee shall send written notice of any decision to suspend the enforcement of an expulsion order during a period of probation to the accused student or parent/guardian. The notice shall also inform the parent/guardian of the right to appeal the expulsion to the County Board of Education.

The accused student or parent/guardian is entitled to file an appeal of the Board's decision to the County Board of Education. The appeal must be filed within 30 days of the Board's decision to expel, even if the expulsion action is suspended and the student is placed on probation.

Upon receipt of a written request by the accused student, the Superintendent or designee shall provide the student with a copy of the written transcripts from the expulsion hearing and supporting documents. The district shall provide the student with these documents within 10 school days following the student's written request.

[Ed Code sec. ____]

Regular reporting

The Superintendent or designee shall report expulsion data to the Board as detailed in Board Policy 5144.3.

The Superintendent or designee shall maintain the following data and report such data annually to the California Department of Education, using forms supplied by the California Department of Education:

1. The number of students recommended for expulsion
2. The specific grounds for each recommended expulsion
3. Whether the student was subsequently expelled
4. Whether the expulsion order was suspended
5. The type of referral made after the expulsion
6. The disposition of the student after the end of the expulsion period.

Training on and distribution of policy

At the beginning of each school year, the principal of each school shall ensure that all students and parents/guardians are notified in writing of all school rules related to discipline, suspension, and expulsion, and shall ensure that this communication is consistent with Board Policy 5144.3 and these regulations, as well as any other policies or regulations governing school discipline.

The Superintendent or designee shall ensure that school safety plans and school handbooks are consistent with applicable policies and regulations, and include illustrative examples of student conduct and possible consequences.

Regulation BERKELEY UNIFIED SCHOOL DISTRICT

approved: XXXX Berkeley, California