

AR 5144.3

Expulsions

This AR provides the implementing regulations for BP 5144.3. These regulations govern expulsions, whereas AR 5144.1 governs suspensions.

Definitions

“Accused student” means the student against whom expulsion proceedings are initiated or contemplated.

“Expellable offense” means an offense for which expulsion is permitted under the Education Code.

“Complainant” means the student who is the alleged victim of another student’s actions, regardless of whether a formal complaint has been filed.

“Witness” means a person, other than the accused student or the complainant, who has, or may have, information related to an incident for which expulsion proceedings are initiated or contemplated against an accused student.

“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.

“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.

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.]

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 or retained 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.

[BP 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 instruction for students serving extended suspensions. The instruction shall be comparable to the instruction received in Berkeley Independent Study, and/or the Special Education Independent Program.

All instruction and related services for students with disabilities shall continue during extended suspension, in accordance with state and federal law.

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. Neither a complainant nor a witness shall ever be required to participate in a restorative justice process, nor be pressured into doing so.

[BP 5144.3.]

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 accused student 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. While no complainant shall ever be required to participate in a restorative justice process, such a process may go forward without the active participation of the complainant where feasible and appropriate.

Investigation of expulsion cases

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

[BP 5144.3.]

Regulations governing the expulsion hearing process

The rights afforded to accused students in the expulsion process are governed by Education Code and Board Policy.

[Ed. Code sec. 48918; BP 5144.3]

Timing of Expulsion Hearing

The accused student is entitled to a hearing to determine whether the student should be expelled. The hearing shall be held within 30 school days after the principal or Superintendent or designee determines that an expellable offense has occurred and the expulsion process has commenced.

The student is entitled to at least one postponement of an expulsion hearing for up to 30 calendar days. The request for postponement shall be in writing. Any subsequent postponement may be granted at the Board's discretion. Consistent with Board Policy, an accused student participating in a restorative justice process may agree to waive the expulsion hearing timelines in order to complete the restorative justice (or other alternative) process or resolution.

[Ed Code sec. 48918(a)(1); BP 5144.3.]

If it is impractical to comply with these time requirements either during the school year or during summer recess, the timelines may be extended pursuant to the provisions of Education Code 48918(a)(3).

Any delay in the expulsion hearing process shall be immediately communicated to the complainant (if any).

Due process for accused student

As detailed in 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.]

Written notice of the hearing shall be forwarded to the accused student and the accused student's parent/guardian and the accused student's legal counsel (if known to the Superintendent or designee) 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;
3. All documents and evidence collected in the course of the case investigation (redacted only for attorney work product and student names) that the Superintendent or designee intends to introduce at the hearing, as well as any exculpatory evidence (including evidence that is, or potentially is, favorable

to the accused student) regardless of whether the Superintendent or designee intends to introduce it at the hearing;

4. 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, under subpoena if necessary and where allowed by law;

5. A list of any and all witnesses the District intends to have testify at the hearing;

6. All records and statements that the District intends to rely on at the hearing;

7. A copy of district disciplinary rules which relate to the alleged violation;

8. 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.

9. 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.

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

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

The notice shall include all of the above information to the extent it is available at the time the notice is sent. If more information subject to disclosure becomes available subsequent to the notice being sent, it shall be provided as soon as possible to the accused student and the accused student's parent/guardian and the accused student's legal counsel (if known to the Superintendent or designee). In the rare case where such documents are provided on the day of the expulsion hearing, the accused student shall be provided additional time to review them, which may require a continuation of the hearing.

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

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 complainant or accused student is enrolled, or on the staff of the school at which the alleged incident took place. 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. If a parent/guardian of either the accused student or the complainant, or any members of either student's immediate family, is an employee of the District, the employee's name shall be provided to the prospective panel members in order to determine whether there is any reason any panel member cannot serve impartially. Prior to the beginning of the hearing, each member of the panel shall be polled to determine if they can be impartial in the case.

[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.

[Ed Code 48918(c)(1).]

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.

[Ed Code sec. 48918(c)(3).]

Before commencing a student expulsion hearing, the Governing Board 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 accused student, the Superintendent or designee, or the county superintendent of schools. 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).

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

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. Teachers may testify on behalf of the accused student with respect to both the offense(s) charged, and the secondary findings that must be made in all cases except those alleging a violation of Education Code section 48915(c), namely that 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); BP 5144.3.]

Any objection raised by the student or the Superintendent or designee to the issuance of subpoenas may be considered by the Board in closed session, or in open session if so requested by the student. The Board's decision in response to such an objection shall be final and binding.

[Ed Code sec. 48918(i)(2).]

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. A recommendation for expulsion cannot be made unless it is supported by substantial evidence that an expellable offense occurred. No recommendation or decision to expel may be made solely on the basis of hearsay evidence.

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

Findings of fact shall be based solely on the evidence at the hearing. 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.

[Ed Code sec. 48918 (i)(3).]

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.

[Ed Code sec. 48918(g).]

Whether the expulsion hearing is held in closed or public session, the Administrative Panel may meet in closed session to deliberate and determine whether or not the student should be expelled. If the Panel admits any other person to this closed deliberation session, the parent/guardian, the accused student, and the counsel of the accused student shall also be allowed to attend the closed session.

[Ed Code 48918(c)(2).]

Testimony by complainant

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. Although the Education Code limits some of these accommodations in cases of sexual harm, Board Policy extends them to all complainants.

[Ed Code sec. 48918(b)(5); BP 5144.3.]

Before a complaining witness testifies, support persons shall be admonished that the hearing is confidential.

The person presiding over the hearing may remove a support person whom he/she finds is disrupting the hearing.

If one or both support persons are also witnesses, the hearing shall be conducted according to Penal Code [868.5](#).

[Ed Code sec. 48918(b)(5).]

Evidence of specific instances of prior sexual conduct of a complainant shall be presumed inadmissible and shall not be heard unless the person conducting the hearing determines that extraordinary circumstances require the evidence to be heard. Before such a determination is made, the complaining witness shall be given notice and an opportunity to oppose the introduction of this evidence with the assistance of a parent/guardian, legal counsel, or other

support person. Reputation or opinion evidence regarding the sexual behavior of the complainant is not admissible for any purpose.

[Ed Code 48918(h)(2).]

In all cases in which a complainant is called to testify in an expulsion hearing involving an alleged violation of Education Code section 48900(n), in order to facilitate a free and accurate statement of the experiences of the complainant and to prevent discouragement of complaints, the hearing panel shall provide a nonthreatening environment, including: 1) a room separate from the hearing room for the use of the complainant before and during breaks in testimony; 2) at the discretion of the person conducting the hearing, the complainant shall be allowed reasonable periods of relief from examination and cross-examination during which he/she may leave the hearing room; and 3) the person conducting the hearing may: (a) Arrange the seating within the hearing room so as to facilitate a less intimidating environment for the complainant; (b) Limit the time for taking the testimony of a complainant to the hours he/she is normally in school, if there is no good cause to take the testimony during other hours; (c) Permit one of the support persons to accompany the complainant to the witness stand.

An expulsion hearing involving allegations of sexual assault or sexual battery may be postponed for one school day in order to accommodate the special physical, mental or emotional needs of a student who is the complaining witness.

[Ed Code sec. 48915.5 (b), (c).]

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.

[Ed Code sec. 48915.5(d).]

Decision

The administrative panel shall, within three school days after the hearing, determine whether to recommend expulsion of the student to the Board. If expulsion is not recommended, the student shall be immediately reinstated. The administrative panel shall submit a detailed, written factual finding to the Board explaining its reasoning for its decision.

[Ed Code 48918(e).]

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.

[BP 5144.3.]

Board Policy details the options available to the Board following receipt of the administrative panels' recommendations.

[BP 5144.3.]

The Board's decision on whether to expel a student shall be made within 10 school days after the conclusion of the hearing, unless the student requests in writing that the decision be postponed. If the Board does not meet on a weekly basis, its decision on whether to expel a student shall be made within 40 school days after the student is removed from his/her school of attendance, unless the student requests in writing that the decision be postponed.

[Ed Code. 48918(a)(2).]

Complainants' Rights in the Expulsion Process

As detailed in the Board Policy, complainants 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. When permitted by law, the complainant shall be informed whether and when the accused student is returning to campus after a period of extended suspension or expulsion.

[BP 5144.3.]

In order to ensure the complainant's safety and access to education throughout the expulsion process, the Superintendent or designee shall develop a safety plan for the complainant (if any), carefully tailored to the individual needs of the complainant, to further the complainant's academic progress and facilitate access to all academic and extracurricular opportunities.

The Superintendent or designee shall also inform the complainant of the procedures that will be followed during the expulsion process.

Whenever the Superintendent or designee recommends an expulsion hearing, the complainant shall be provided with a copy of the applicable disciplinary rules and advised 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. In cases brought pursuant to section 48900(n), have a closed hearing during the time he/she testifies.

[Ed Code sec. 48915.5(a).]

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.

[Ed Code sec. 48918(d).]

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, in writing, within 24 hours of the decision. This notice shall include the following:

1. The specific offense committed by the accused student;
2. The fact that a description of readmission procedures will be made available to the accused student and his/her parent/guardian, and his/her counsel (if any);
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 48918(j).]

Although the law prohibits the Superintendent or designee from informing the complainant (if any) that the accused student has been expelled, the Superintendent or designee shall inform the complainant (if any), within 24 hours of the Board's decision, whether the accused student will be returning to school.

Upon ordering an expulsion, the Board shall set a date when the student shall be reviewed for readmission to a school within the district. At the time of the expulsion order, the Board shall recommend a plan for the student's rehabilitation, which may include periodic review (as well as assessment of the student at the time of review for readmission), and recommendations for improved attendance and/or academic performance, tutoring, special education assessments, job training, counseling, employment, and community service, among other possible rehabilitative programs.

The rehabilitation plan shall be 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.

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.

[Ed Code sec. 48917; BP 5144.3]

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.

Suspended enforcement of expulsions orders

Board policy requires that the Superintendent or designee ensure that any suspended enforcement of an expulsion order is also accompanied by a rehabilitation plan as described above.

[Ed Code sec. 48917; BP 5144.3]

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

Pursuant to Board Policy, 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.

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.

If the readmission is granted, the Superintendent or designee shall notify the student and parent/guardian immediately and in writing within 24 hours of the Board's decision regarding readmission. The Superintendent or designee shall also inform the complainant (if any) of the decision regarding readmission within 24 hours of the decision, so long as doing so does not violate the District's obligation to the accused student's privacy.

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.

If, and only if, the Board determines that the accused student poses an imminent danger to campus safety or to other students or employees of the

District, it may deny readmission. If the Board denies the readmission of a student, the Superintendent or designee shall determine either to continue the student's placement in the alternative educational program initially selected or to place the student in another program that serves expelled students, including placement in a county community school. The Superintendent or designee shall provide written notice to the expelled student and parent/guardian describing the reasons for denying readmittance into the regular program. This notice shall indicate the determination of the educational program which the Superintendent or designee has chosen. The student shall enroll in that program unless the parent/guardian chooses to enroll the student in another school district.

If readmission is denied, the Superintendent or designee shall evaluate the student at least on a monthly basis to determine whether he or she remains, in the opinion of the Superintendent or designee, an imminent danger to campus safety or to other students or employees of the District, and shall provide a recommendation to the Board on at least a monthly basis as to whether to readmit the student. Readmission of the student can occur at the time of any of these monthly reviews, as soon as the Board determines that the student no longer poses an imminent danger.

Right to Appeal

The Superintendent or designee shall send written notice of any decision to expel or 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.

Simultaneously with the filing of the notice of appeal with the county board of education, the accused student or parent/guardian may submit a written request for a copy of the written transcript from the expulsion hearing and supporting documents. Within 10 school days of 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, at no cost to the student.

[Ed Code sec. 48919]

Maintenance of Records

The Board shall maintain a record of each expulsion, including the specific cause of the expulsion. The expulsion record shall be maintained in the student's mandatory interim record and sent to any school in which the student subsequently enrolls upon receipt of a written request by the admitting school.

The Superintendent or designee shall, within five working days, honor any other district's request for information about an expulsion from this district.

Description of Process

The Superintendent or designee shall create one simple description of the expulsion process and timelines that is made available to families of both accused students and complainants. When completed, this description shall be appended to these regulations.

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 also 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 referred 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.

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 and district 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.

For review at January 11, 2017 Board meeting

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