



### **POLICY 5.1817**

- 4C** I recommend that the Board approve adoption of the proposed **revised** Policy 5.1817, entitled “Student Expulsion.”

[Contact: Cheryl Alligood, PX 46888.]

#### **Adoption**

#### **CONSENT ITEM**

- The proposed policy was approved for development at the July 23, 2014 Board Meeting.
- The proposed changes to this policy are made to modify and simplify the procedures relating to expulsions including pre-hearing procedures, due process procedures, and re-entry procedures after an expulsion term.
- The proposed changes incorporate an administrative review of all recommended expulsions in addition to the legal review. An additional review shall be conducted by the Chief Academic Officer.
- The proposed changes provide for mitigation factors to be considered by the impartial hearing officer, along with disputed issues of material fact. The hearing officer’s review and recommendation on mitigation factors will be incorporated into the order and will take the place of the private confidential meetings before the School Board. Parents will be afforded the opportunity to speak on the agenda item for 3 minutes at the regular public Board meeting.
- In the interest of academic achievement, the proposed changes provide for re-entry from an expulsion to occur at the end of a marking period, whenever practical at the discretion of the Area Superintendent.
- The proposed change also incorporates felony suspensions, replacing School Board Policy 5.80: General Disciplinary Policy for Criminal Acts.

**POLICY 5.1817**

**STUDENT EXPULSION**

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3 1. **Definition.**-- Expulsion is defined as "the removal of the right and obligation of a  
4 student to attend a public school under conditions set by the district school  
5 board, and for a period of time not to exceed the remainder of the term or school  
6 year and 1 additional year of attendance. Expulsions may be imposed with or  
7 without continuing educational services and shall be reported accordingly." Fla.  
8 Stat. § 1003.01(6).

9 2. **General Provisions**

10 a. All disciplinary incidents resulting in a recommendation for expulsion shall  
11 be coded appropriately within the parameters of the School Board's  
12 discipline matrix set forth in Policies 5.1812 and 5.1813 and treated in  
13 accordance with Policy 5.1814, "Most Severe Consequences for Violent  
14 Acts." In addition, Fla. Stat. § 1006.09(1)(c) provides that:

15 "The principal or the principal's designee may recommend . . . the  
16 expulsion of any student who has committed a serious breach of  
17 conduct, including, but not limited to, willful disobedience, open  
18 defiance of authority of a member of his or her staff, violence  
19 against persons or property, or any other act which substantially  
20 disrupts the orderly conduct of the school. A recommendation of  
21 expulsion or assignment to a second chance school may also be  
22 made for any student found to have intentionally made false  
23 accusations that jeopardize the professional reputation,  
24 employment, or professional certification of a teacher or other  
25 member of the school staff, according to the district school board  
26 code of student conduct."

27 b. As required by Fla. Stat. § 1006.13(4), this Policy "provid[e]s that any  
28 student found to have committed a violation of s. 784.081(1), (2), or (3)  
29 [aggravated battery, aggravated assault, or battery on a Board member or  
30 District employee] shall be expelled or placed in an alternative school  
31 setting or other program, as appropriate. Upon being charged with the  
32 offense, the student shall be removed from the classroom immediately  
33 and placed in an alternative school setting pending disposition."

34 c. Only the principal of a school may recommend expulsion to the  
35 Superintendent. In the case of a charter school student, the charter-school  
36 principal shall make the expulsion recommendation to the charter school's

37 governing body and, if the governing body approves the recommendation,  
38 the governing body shall forward it to the Superintendent.

39 d. Only the School Board, by vote in a regular or special meeting, may  
40 officially expel a student (including a student recommended for expulsion  
41 by a charter school's governing body) from the regular education program  
42 of the District school system.

### 43 3. Pre-Hearing Procedures

44 a. *Student Placement Pending Expulsion.* -- Upon the principal's decision to  
45 recommend expulsion, the student shall be issued a ten-day out-of-school  
46 suspension, using the procedures in Policy 5.1815, and reassigned to the  
47 Department of Alternative Education under Policy 8.13. This assignment  
48 shall be in effect until the School Board officially votes on the expulsion  
49 (which should be within sixty (60) calendar days). During that period, a  
50 student may receive public school educational services only through the  
51 Department of Alternative Education.

52 b. *Other Measures.*-- As required by Fla. Stat. § 1006.09(1)(c), "Any  
53 recommendation of expulsion shall include a detailed report by the  
54 principal or the principal's designated representative on the alternative  
55 measures taken prior to the recommendation of expulsion."

56 c. ~~*Safe Schools Administrative Review.*~~ -- The principal, after discussing with  
57 their Area Superintendent, shall contact a Safe Schools representative to  
58 review the offense and determine if the action is expellable based on the  
59 Student Code of Conduct.

60 d. ~~e.~~ Legal Review-- The principal's expulsion-recommendation packet shall  
61 be forwarded within three work days to the ~~Department of Legal Services~~  
62 ~~Office of General Counsel~~ for review. An attorney from the ~~Department of~~  
63 ~~Legal Services Office of General Counsel~~ shall review each packet for  
64 legal sufficiency.

65 i. If the attorney finds the packet is not legally sufficient, the attorney  
66 shall communicate the deficiencies to the reporting school. If  
67 additional information is available that would make the packet  
68 legally sufficient, it should promptly be forwarded to the ~~Department~~  
69 ~~of Legal Services Office of General Counsel~~ for further review. If  
70 the packet cannot sustain legal review, the expulsion process shall  
71 end and the student shall be referred to his/her respective Area  
72 Office for placement. ~~into the regular school program.~~

73 ii. If the packet is deemed legally sufficient, it shall be forwarded to the  
74 Expulsion Screening Committee ~~with the signature of an attorney in~~  
75 ~~the Department of Legal Services to indicate the legal sufficiency.~~

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e. ~~d.~~ *Expulsion Screening Committee*-- A committee consisting of three principals/designees, one each from an elementary, middle, and high school, plus an **area administrator/designee** ~~Area Director~~, will meet, to the extent possible, each week during the school year.

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i. Each Committee meeting will be conducted by an attorney from the ~~Department of Legal Services~~ **Office of General Counsel**, who will have no vote but will be available to answer questions regarding legal issues for the Committee members. The Committee shall review each expulsion packet forwarded by the ~~Department of Legal Services~~ **Office of General Counsel**, and, by majority vote, determine whether the packet shall be forwarded to the **Chief Academic Officer for review and then forwarded to the Superintendent** for a recommendation of expulsion to the School Board.

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ii. If the Expulsion Screening Committee declines to forward the recommendation to the Superintendent, the principal of the school where the incident occurred may appeal ~~at to~~ the next Screening Committee meeting. The principal will be allowed ~~only until that next meeting (generally one week)~~ **one week** to submit additional information to support the recommendation of expulsion. At that next meeting, the Committee shall review the additional information, along with the original information, to determine if it should be forwarded to the Superintendent.

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~~A.~~ If at that next meeting the Committee declines to forward the recommendation to the Superintendent, the expulsion recommendation process ends; and the student will be referred to his/her respective Area Office for placement. ~~into the regular school program.~~

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B. If at that next meeting the Committee decides to forward the recommendation to the **Chief Academic Officer and then forwarded to the Superintendent**, the expulsion process will proceed.

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4. **Due Process Procedures**-- Pursuant to Fla. Stat. § 1002.20(4)(b), "public school students and their parents have the right to written notice of a recommendation of expulsion, including the charges against the student and a statement of the right of the student to due process." Due process includes notice and opportunity to be heard.

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a. **Notice**-- The student, and the parents/guardian of the student, who the Superintendent will recommend for expulsion shall be issued written

116 notice that the Superintendent will recommend expulsion. This notice will  
117 be issued within ten (10) calendar days of the Superintendent's decision.  
118 Pursuant to Fla. Stat. §§ 1006.07(1)(a) and 1006.08, the notice shall  
119 contain the following:

- 120 i. A statement of the charges for which expulsion will be  
121 recommended;
- 122 ii. Notification that the student has a right to a hearing under Fla. Stat.  
123 §§ 120.569 and 120.57 to contest the recommendation.
- 124 iii. Notification that the student has the right to be represented by an  
125 attorney and to call witnesses to testify at the hearing on the  
126 student's behalf.
- 127 iv. Notification of the provisions of the Sunshine Law and that the  
128 parent may elect to have the hearing held in public; otherwise, it  
129 shall be closed to the public.

130 b. **Opportunity to Be Heard.**-- Every student who is recommended for  
131 expulsion shall have the right to a hearing **before an impartial Hearing**  
132 **Officer**, to tell his/her side of the story or to explain or refute the evidence  
133 against him/her, in denial or mitigation of the charges.

134 i. It shall be the responsibility of the  
135 student/parent/guardian/representative to request a hearing,  
136 through the **Department of Legal Services Office of General**  
137 **Counsel**, in a timely fashion--within fifteen (15) days after receipt of  
138 the notice of recommendation for expulsion. If no request for a  
139 hearing is timely made, the student is deemed to have waived the  
140 right to a hearing; the recommendation for expulsion shall be  
141 forwarded to the School Board for vote; and the facts of the  
142 charges in the notice will be deemed by the School Board to be  
143 true.

144 ii. ~~Pursuant to AGO 2001-05,~~ ¶The student may request a hearing  
145 under Fla. Stat. § 120.57(1) when there is a disputed issue of  
146 material fact or under § 120.57(2) if there is no disputed issue of  
147 material fact. In either type of proceeding, the hearing shall be  
148 informal in nature and the rules of evidence will apply loosely.

149 A. *Disputed Issues of Material Fact.*-- In cases where the  
150 student will contest a material issue of fact such as denying  
151 that he/she actually committed the act as charged, the  
152 hearing officer will serve as the finder of fact. The burden of  
153 proof rests with the School District. When material facts are  
154 in dispute, the standard of proof is the "preponderance of the

155 evidence" i.e., whether it is reasonable to conclude from all  
156 the evidence submitted by both the School District and the  
157 student that the pupil did commit the violation with which he  
158 or she is charged as the basis for expulsion. After the  
159 conclusion of the hearing the hearing officer shall issue  
160 written findings of fact as to whether the evidence presented  
161 supports the charge(s) against the student.

162 B. *No Disputed Issues of Material Fact.*-- When the student  
163 does not dispute the factual basis for the expulsion  
164 recommendation, the student is entitled to a hearing under  
165 Fla. Stat. § 120.57(2), to address whether the undisputed  
166 material facts constitute a violation of School Board Policy,  
167 State Board of Education Rules, and/or state or federal  
168 statutes, forming a lawful basis for expulsion.

169 iii. Although the Board shall make the final decision on the  
170 Superintendent's expulsion recommendation, an impartial volunteer  
171 hearing officer from the community will preside over the hearing. ~~as~~  
172 ~~authorized by Policy 4.114.~~

173 A. The factual and legal issues to be addressed in the hearing  
174 and in the hearing officer's recommended order are: 1)  
175 findings of fact--whether the student committed the act as  
176 charged, within the jurisdiction of the School District; and 2)  
177 conclusions of law--whether the act constituted a violation (of  
178 School Board Policy, State Board of Education Rules, and/or  
179 state or federal statutes) which forms a lawful basis for  
180 expulsion. On these issues, the student/ representative may  
181 provide oral evidence or argument and documents,  
182 memoranda of law, or other written materials in opposition to  
183 the recommended expulsion action.

184 B. Although the hearing officer cannot enter settlement  
185 negotiations, ~~or recommend they can consider~~ mitigation of  
186 the expulsion penalty to a lesser consequence. ~~the student~~  
187 ~~will be allowed to provide oral or written evidence or~~  
188 ~~argument in support of mitigating the penalty, pursuant to~~  
189 ~~F.A.C. Rule 28-106.302(1), (2).~~ If facts and/or legal  
190 arguments are asserted as a basis for mitigation and the  
191 hearing officer finds them credible, the recommended order  
192 should report them under a separate heading such as  
193 "Credible Mitigation Considerations." ~~without making a~~  
194 ~~recommendation on mitigation (as the recommended order~~  
195 ~~will limit its conclusions of law to whether the violation~~  
196 ~~occurred as charged and forms a lawful basis for expulsion).~~

197                   The Superintendent should take those reported credible  
198 mitigating facts or legal arguments into consideration when  
199 making the expulsion recommendation to the Board, and the  
200 Board should take them into consideration when acting on  
201 the recommendation.

202 **5. School Board Action on Expulsion Recommendations.** The School Board  
203 normally will vote during its regular monthly meeting on the Superintendent's  
204 recommendations to expel students whose cases have proceeded though the  
205 above-described process.; additionally, Fla. Stat. § 1006.08(1) also allows such  
206 action at a special meeting.

207       a. The School Board will vote on the Superintendent's recommendations to  
208 expel students whose cases have proceeded through the above-described  
209 process.

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211       a. After the hearing held by a hearing officer, and before the meeting  
212 where the Board will enter the final order of expulsion, students and their  
213 parents/guardian and/or representative may appear in a closed, private  
214 meeting with school board members pursuant to Policy 1.03(17), to  
215 express their views on the recommended penalty, such as if they believe  
216 mitigating circumstances contraindicate expulsion or would make a shorter  
217 term of expulsion appropriate. An individual's comments made during this  
218 closed session shall be limited strictly to three (3) minutes. Comments  
219 shall be limited to mitigation only. There shall be no retrial of the issues  
220 surrounding the facts of the incident that merited expulsion. The Board's  
221 vote on the expulsion and entry of the final order will occur, without  
222 mention of the student's name or other personally-identifiable information,  
223 at the general meeting following this closed session.

224       b. If the student/parent did not request a hearing, the student/parent or  
225 legal guardian/representative will have an opportunity to express their  
226 views on the recommended penalty by making public comment at the  
227 meeting where the Board will issue the final order. Like other speakers  
228 offering comments on agenda items pursuant to Policy 1.03, such  
229 student/parent or legal guardian/ representative can provide input and  
230 insight to the Board (regarding the proposed expulsion).

231       c. In considering the Superintendent's recommendation, the Board should  
232 impartially consider what, under all the circumstances, the penalty should  
233 be, as stated in AGO 87-33.

234       b. ~~d.~~ After the Board votes on the expulsion, the student/parents/guardian/  
235 representative will be notified in writing of the Board's decision.

236                   i. If the Board votes to expel, a written notice of expulsion will be  
237 mailed to the student/parent/guardian/representative. ~~The notice~~

238 ~~will detail the length of the expulsion, that the expulsion is with~~  
239 ~~services or without services, and where the student will receive~~  
240 ~~educational services, if applicable. The length of expulsion will~~  
241 ~~be reduced to reflect time already spent at an alternative site,~~  
242 ~~unless the Board votes otherwise (such as if the offense is a~~  
243 ~~violent act listed in Policy 5.1814).~~

244 ii. If the Board votes to decline the expulsion, a notification will be  
245 sent to the student/parent/guardian/representative and the  
246 student will be referred to his/her respective Area Office for  
247 placement.

## 248 6. Re-Entry after Expiration of the Expulsion

249 a. Upon the expiration of the expulsion period, the student's Area Office shall  
250 ~~determine educational placement. place the student back into the regular~~  
251 ~~education program of the School District.~~ It is the responsibility of the  
252 student and his/her parent/guardian or representative to contact the  
253 appropriate Area Office for placement.

254 b. No student, after expiration of the expulsion, shall be transitioned back to  
255 the school where the incident meriting expulsion occurred unless the  
256 principal of the school is first notified and given the option of accepting the  
257 student back into that school. In accordance with the Fla. Stat. §§  
258 1002.20(5) and 1006.13(5), students who have been victims of certain  
259 felony offenses by other students, as well as the siblings of the student  
260 victims, may need to be kept separated from the student offender at  
261 school and during school transportation.

262 c. ~~In the interest of academic achievement re-entry from an expulsion shall~~  
263 ~~occur at the end of a marking period, whenever practical at the discretion~~  
264 ~~of the Area Superintendent.~~

## 265 7. Felony Suspension

266 a. ~~Felony Suspension proceedings may be initiated against any enrolled~~  
267 ~~student who is formally charged with a felony, or with a delinquent act~~  
268 ~~which would be a felony if committed by an adult, by a proper prosecuting~~  
269 ~~attorney for an incident which allegedly occurred on property other than~~  
270 ~~public school property.~~

271 b. ~~A Felony Suspension requires an adverse impact on the educational~~  
272 ~~program, discipline, or welfare in the school in which the student is~~  
273 ~~enrolled.~~

274 c. ~~Felony Suspension proceedings shall be conducted by the~~  
275 ~~Principal/designee, Area Superintendent/designee and may be attended~~



276 by the student, the parent/guardian, the student's representative or  
277 counsel, and any witnesses requested by the student or the principal.

278 d. Students recommended for a Felony Suspension shall be placed in an  
279 alternative education program pending the outcome of court proceedings.  
280 If the court determines that the student did commit the felony, the Principal  
281 may recommend expulsion for up to one (1) year from the date of the  
282 felony incident. If the court determines that the student did not commit the  
283 felony, the student shall be referred to the Area Superintendent for  
284 placement.

STATUTORY AUTHORITY: §§ 1001.41(2); 1001.43(1), 1006.07, 1006.09(1)(c)2.

LAWS IMPLEMENTED: §§ 1001.43(1)(e), 1002.20; 1006.07; 1006.08; 1006.09(1)(c)2; 1006.13, Fla. Stat.

HISTORY: New: 9/13/2004; \_\_/\_\_/14.

Legal Signoff:

The Legal Department has reviewed proposed Policy 5.1817 and finds it legally sufficient for adoption by the Board.

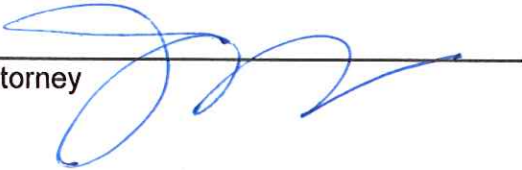
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Attorney

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Date

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