



POLICY 5.1817

5C I recommend that the Board approve development of the proposed **revised** Policy 5.1817, entitled “Student Expulsion.”

[Contact: Cheryl Alligood, PX 46888.]

Development

CONSENT ITEM

- 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

1
2
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.~~

76

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

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

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

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

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

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

114 a. **Notice**-- The student, and the parents/guardian of the student, who the
115 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 through 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.

210
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.

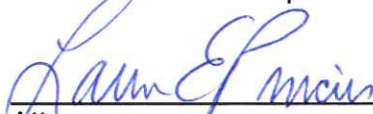
STATUTORY §§ 1001.41(2); 1001.43(1), 1006.07, 1006.09(1)(c)2.
AUTHORITY:

LAWS §§ 1001.43(1)(e), 1002.20; 1006.07; 1006.08; 1006.09(1)(c)2;
IMPLEMENTED: 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 development by the Board.



Attorney



Date