



### POLICY 5.1817

4-H I recommend the Board adopt the proposed new Policy 5.1817, to be entitled "Student Expulsion."

[Contact: Laura Pincus, Esq., 434-8500.]

#### Adoption

#### CONSENT ITEM

- The Board approved development of this Policy on April 19 and June 28, 2004. The adoption notices were duly advertised on April 26 and July 5, 2004.
- Pursuant to requests of the Board on April 19 and June 21, certain provisions of the Policy development have been amended:
  - Lines 43-46: clarifies that "In the case of a charter school student, the charter-school principal shall make the expulsion recommendation to the charter school's governing body and, *if the governing body approves the recommendation, the governing body shall forward it to the Superintendent.*"
  - Lines 122-125: clarifies that "the student, and the parents/guardian of the student, who the Superintendent will recommend for expulsion shall be issued written notice that the Superintendent will recommend expulsion. *This notice will be issued within ten (10) calendar days of the Superintendent's decision.*"
  - Lines 250-252: clarifies that "The length of expulsion will be reduced to reflect time already spent at an alternative site, unless the Board votes otherwise (such as if the offense is a violent act listed in Policy 5.1814)."
- This new Policy will codify uniform procedures and standards for administrators in making and processing recommendations for student expulsion and Board standards for consideration of the recommendations.

POLICY 5.1817

STUDENT EXPULSION

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6 1. Definition.-- Expulsion is defined as "the removal of the right and obligation of a  
7 student to attend a public school under conditions set by the district school board,  
8 and for a period of time not to exceed the remainder of the term or school year and  
9 1 additional year of attendance. Expulsions may be imposed with or without  
10 continuing educational services and shall be reported accordingly." Fla. Stat. §  
11 1003.01(6).

12  
13 2. General Provisions

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

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

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

41  
42 c. Only the principal of a school may recommend expulsion to the  
43 Superintendent. In the case of a charter school student, the charter-school

44 principal shall make the expulsion recommendation to the charter school's  
45 governing body and, if the governing body approves the recommendation, the  
46 governing body shall forward it to the Superintendent.

47  
48 d. Only the School Board, by vote in a regular or special meeting, may officially  
49 expel a student (including a student recommended for expulsion by a charter  
50 school's governing body) from the regular education program of the District  
51 school system.

### 52 53 3. Pre-Hearing Procedures

54  
55 a. *Student Placement Pending Expulsion.*-- Upon the principal's decision to  
56 recommend expulsion, the student shall be issued a ten-day out-of-school  
57 suspension, using the procedures in Policy 5.1815, and reassigned to the  
58 Department of Alternative Education under Policy 8.13. This assignment shall  
59 be in effect until the School Board officially votes on the expulsion (which  
60 should be within sixty (60) calendar days). During that period, a student may  
61 receive educational services only through the Department of Alternative  
62 Education.

63  
64 b. *Other Measures.*-- As required by Fla. Stat. § 1006.09(1)(c), "Any  
65 recommendation of expulsion shall include a detailed report by the principal or  
66 the principal's designated representative on the alternative measures taken  
67 prior to the recommendation of expulsion."

68  
69 c. *Legal Review.*-- The principal's expulsion-recommendation packet shall be  
70 forwarded within two work days to the Department of Legal Services for  
71 review. An attorney from the Department of Legal Services shall review each  
72 packet for legal sufficiency.

73  
74 i. If the attorney finds the packet is not legally sufficient, the attorney shall  
75 communicate with the reporting school to determine if it is possible to  
76 make the packet legally sufficient. If the packet cannot sustain legal  
77 review, the expulsion process shall end and the student shall be referred  
78 to his/her respective Area Office for placement into the regular school  
79 program.

80  
81 ii. If the packet is legally sufficient, it shall be forwarded to the Expulsion  
82 Screening Committee.

83  
84 d. *Expulsion Screening Committee.*-- A committee consisting of three  
85 principals/designees, one each from an elementary, middle, and high school,  
86 plus an area administrator/designee, will meet, to the extent possible, each  
87 week during the school year.

88  
89 i. Each Committee meeting will be conducted by an attorney from the  
90 Department of Legal Services, who will have no vote but will be available  
91 to answer questions regarding legal issues for the Committee members.  
92 The Committee shall review each expulsion packet forwarded by the  
93 Department of Legal Services, and, by majority vote, determine whether  
94 the packet shall be forwarded to the Superintendent for a  
95 recommendation of expulsion to the School Board.

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

105  
106 A. If at that next meeting the Committee declines to forward the  
107 recommendation to the Superintendent, the expulsion  
108 recommendation process ends; and the student will be referred to  
109 his/her respective Area Office for placement into the regular school  
110 program.

111  
112 B. If at that next meeting the Committee decides to forward the  
113 recommendation to the Superintendent, the expulsion process will  
114 proceed.

115  
116 4. Due Process Procedures.-- Pursuant to Fla. Stat. § 1002.20(4)(b), "public school  
117 students and their parents have the right to written notice of a recommendation of  
118 expulsion, including the charges against the student and a statement of the right of  
119 the student to due process." Due process includes notice and opportunity to be  
120 heard.

121  
122 a. Notice.-- The student, and the parents/guardian of the student, who the  
123 Superintendent will recommend for expulsion shall be issued written notice  
124 that the Superintendent will recommend expulsion. This notice will be issued  
125 within ten (10) calendar days of the Superintendent's decision. Pursuant to  
126 Fla. Stat. §§ 1006.07(1)(a) and 1006.08, the notice shall contain the following:

127  
128 i. A statement of the charges for which expulsion will be recommended;

129  
130 ii. Notification that the student has a right to a hearing under Fla. Stat. §§  
131 120.569 and 120.57 to contest the recommendation.

132  
133 iii. Notification that the student has the right to be represented by an attorney  
134 and to call witnesses to testify at the hearing on the student's behalf.

135  
136 iv. Notification of the provisions of the Sunshine Law and that the parent may  
137 elect to have the hearing held in public; otherwise, it shall be closed to the  
138 public.

139  
140 b. Opportunity to Be Heard.-- Every student who is recommended for  
141 expulsion shall have the right to a hearing, to tell his/her side of the story or to  
142 explain or refute the evidence against him/her, in denial or mitigation of the  
143 charges.

144  
145 i. It shall be the responsibility of the student/parent/guardian/representative  
146 to request a hearing, through the Department of Legal Services, in a  
147 timely fashion--within fifteen (15) days after receipt of the notice of  
148 recommendation for expulsion. If no request for a hearing is timely made,  
149 the student is deemed to have waived the right to a hearing; the  
150 recommendation for expulsion shall be forwarded to the School Board for  
151 vote; and the facts of the charges in the notice will be deemed by the  
152 School Board to be true.

153  
154 ii. Pursuant to AGO 2001-05, the student may request a hearing under Fla.  
155 Stat. § 120.57(1) when there is a disputed issue of material fact or under  
156 § 120.57(2) if there is no disputed issue of material fact. In either type of  
157 proceeding, the hearing shall be informal in nature and the rules of  
158 evidence will apply loosely.

159  
160 A. Disputed Issues of Material Fact.-- In cases where the student will  
161 contest a material issue of fact such as denying that he/she actually  
162 committed the act as charged, the hearing officer will serve as the  
163 finder of fact. The burden of proof rests with the School District.  
164 When material facts are in dispute, the standard of proof is the  
165 "preponderance of the evidence" i.e., whether it is reasonable to  
166 conclude from all the evidence submitted by both the School District  
167 and the student that the pupil did commit the violation with which he  
168 or she is charged as the basis for expulsion. After the conclusion of  
169 the hearing the hearing officer shall issue written findings of fact as  
170 to whether the evidence presented supports the charge(s) against  
171 the student.

172  
173 B. No Disputed Issues of Material Fact.-- When the student does not  
174 dispute the factual basis for the expulsion recommendation, the  
175 student is entitled to a hearing under Fla. Stat. § 120.57(2), to

176 address whether the undisputed material facts constitute a violation  
177 of School Board Policy, State Board of Education Rules, and/or state  
178 or federal statutes, forming a lawful basis for expulsion.

179  
180 iii. Although the Board shall make the final decision on the Superintendent's  
181 expulsion recommendation, an impartial volunteer hearing officer from the  
182 community will preside over the hearing as authorized by Policy 4.114.

183  
184 A. The factual and legal issues to be addressed in the hearing and in  
185 the hearing officer's recommended order are: 1) findings of fact--  
186 whether the student committed the act as charged, within the  
187 jurisdiction of the School District; and 2) conclusions of law--whether  
188 the act constituted a violation (of School Board Policy, State Board of  
189 Education Rules, and/or state or federal statutes) which forms a  
190 lawful basis for expulsion. On these issues, the student/  
191 representative may provide oral evidence or argument and  
192 documents, memoranda of law, or other written materials in  
193 opposition to the recommended expulsion action.

194  
195 B. Although the hearing officer cannot enter settlement negotiations or  
196 recommend mitigation of the expulsion penalty to a lesser  
197 consequence, the student will be allowed to provide oral or written  
198 evidence or argument in support of mitigating the penalty, pursuant  
199 to F.A.C. Rule 28-106.302(1), (2). If facts and/or legal arguments  
200 are asserted as a basis for mitigation and the hearing officer finds  
201 them credible, the recommended order should report them under a  
202 separate heading such as "Credible Mitigation Considerations,"  
203 without making a recommendation on mitigation (as the  
204 recommended order will limit its conclusions of law to whether the  
205 violation occurred as charged and forms a lawful basis for  
206 expulsion). The Superintendent should take those reported credible  
207 mitigating facts or legal arguments into consideration when making  
208 the expulsion recommendation to the Board, and the Board should  
209 take them into consideration when acting on the recommendation.

210  
211 5. School Board Action on Expulsion Recommendations.-- The School Board  
212 normally will vote during its regular monthly meeting on the Superintendent's  
213 recommendations to expel students whose cases have proceeded through the  
214 above-described process; additionally, Fla. Stat. § 1006.08(1) also allows such  
215 action at a special meeting.

216  
217 a. After the hearing held by a hearing officer, and before the meeting where the  
218 Board will enter the final order of expulsion, students and their  
219 parents/guardian and/or representative may appear in a closed, private

220 meeting with school board members pursuant to Policy 1.03(17), to express  
221 their views on the recommended penalty, such as if they believe mitigating  
222 circumstances contraindicate expulsion or would make a shorter term of  
223 expulsion appropriate. An individual's comments made during this closed  
224 session shall be limited strictly to three (3) minutes. Comments shall be  
225 limited to mitigation only. There shall be no retrial of the issues surrounding  
226 the facts of the incident that merited expulsion. The Board's vote on the  
227 expulsion and entry of the final order will occur, without mention of the  
228 student's name or other personally-identifiable information, at the general  
229 meeting following this closed session.

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

238  
239 c. In considering the Superintendent's recommendation, the Board should  
240 impartially consider what, under all the circumstances, the penalty should be,  
241 as stated in AGO 87-33.

242  
243 d. After the Board votes on the expulsion, the student/parents/guardian/  
244 representative will be notified in writing of the Board's decision.

245  
246 i. If the Board votes to expel, a written notice of expulsion will be mailed to  
247 the student/parent/guardian/representative. The notice will detail the  
248 length of the expulsion, that the expulsion is with services or without  
249 services, and where the student will receive educational services, if  
250 applicable. The length of expulsion will be reduced to reflect time already  
251 spent at an alternative site, unless the Board votes otherwise (such as if  
252 the offense is a violent act listed in Policy 5.1814).

253  
254 ii. If the Board votes to decline the expulsion, a notification will be sent to  
255 the student/parent/guardian/representative and the student will be  
256 referred to his/her respective Area Office for placement.

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

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260 a. Upon the expiration of the expulsion period, the student's Area Office shall  
261 place the student back into the regular education program of the School  
262 District. It is the responsibility of the student and his/her parent/guardian or  
263 representative to contact the appropriate Area Office for placement.

264  
265 b. No student, after expiration of the expulsion, shall be transitioned back to the  
266 school where the incident meriting expulsion occurred unless the principal of  
267 the school is first notified and given the option of accepting the student back  
268 into that school. In accordance with the Fla. Stat. §§ 1002.20(5) and  
269 1006.13(5), students who have been victims of certain felony offenses by  
270 other students, as well as the siblings of the student victims, may need to be  
271 kept separated from the student offender at school and during school  
272 transportation.  
273

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

275 LAWS IMPLEMENTED: §§ 1001.43(1)(e), 1002.20; 1006.07; 1006.08;  
276 1006.09(1)(c)2; 1006.13, Fla. Stat.

277  
278 HISTORY: NEW: / /04



Legal Signoff:

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

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Attorney

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Date

## Expulsion Process

