



### **POLICY 5.1817**

**4-A** 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**

- 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.
- 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. The Board requested further amendments on August 2, and another Adoption Notice was advertised on August 16.
- Pursuant to requests of the Board on April 19, June 21, and August 2, certain provisions of the Policy development text have been amended:
  - Lines 42-45: 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 59-61: clarifies the only public educational services available during a student's expulsion will be from the Department of Alternative Education (but, by implication, students may also choose to receive educational services from a private school during expulsion).
  - Lines 68-70: allows principals to submit the expulsion packet within three work days, rather than only two days.
  - Lines 73-77: clarifies the procedure for cases where the principal's packet does not appear to be legally sufficient.
  - Lines 81-84: requires an attorney in the Department of Legal Services to sign off on the legal sufficiency of a packet that is found to be legally sufficient.
  - Lines 123-126: 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 251-253: 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)."

POLICY 5.1817

STUDENT EXPULSION

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

11  
12 2. General Provisions

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

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

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

40  
41 c. Only the principal of a school may recommend expulsion to the  
42 Superintendent. In the case of a charter school student, the charter-school  
43 principal shall make the expulsion recommendation to the charter school's

44 governing body and, if the governing body approves the recommendation, the  
45 governing body shall forward it to the Superintendent.

- 46  
47 d. Only the School Board, by vote in a regular or special meeting, may officially  
48 expel a student (including a student recommended for expulsion by a charter  
49 school's governing body) from the regular education program of the District  
50 school system.

### 51 52 3. Pre-Hearing Procedures

- 53  
54 a. Student Placement Pending Expulsion.-- Upon the principal's decision to  
55 recommend expulsion, the student shall be issued a ten-day out-of-school  
56 suspension, using the procedures in Policy 5.1815, and reassigned to the  
57 Department of Alternative Education under Policy 8.13. This assignment shall  
58 be in effect until the School Board officially votes on the expulsion (which  
59 should be within sixty (60) calendar days). During that period, a student may  
60 receive public school educational services only through the Department of  
61 Alternative Education.

- 62  
63 b. Other Measures.-- As required by Fla. Stat. § 1006.09(1)(c), "Any  
64 recommendation of expulsion shall include a detailed report by the principal or  
65 the principal's designated representative on the alternative measures taken  
66 prior to the recommendation of expulsion."

- 67  
68 c. Legal Review.-- The principal's expulsion-recommendation packet shall be  
69 forwarded within three work days to the Department of Legal Services for  
70 review. An attorney from the Department of Legal Services shall review each  
71 packet for legal sufficiency.

- 72  
73 i. If the attorney finds the packet is not legally sufficient, the attorney shall  
74 communicate the deficiencies to the reporting school. If additional  
75 information is available that would make the packet legally sufficient, it  
76 should promptly be forwarded to the Department of Legal Services for  
77 further review. If the packet cannot sustain legal review, the expulsion  
78 process shall end and the student shall be referred to his/her respective  
79 Area Office for placement into the regular school program.

- 80  
81 ii. If the packet is deemed legally sufficient, it shall be forwarded to the  
82 Expulsion Screening Committee with the signature of an attorney in the  
83 Department of Legal Services to indicate the legal sufficiency.

- 84  
85 d. Expulsion Screening Committee.-- A committee consisting of three  
86 principals/designees, one each from an elementary, middle, and high school,

87 plus an area administrator/designee, will meet, to the extent possible, each  
88 week during the school year.

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

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

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

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

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

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

128  
129 i. A statement of the charges for which expulsion will be recommended;  
130

131 ii. Notification that the student has a right to a hearing under Fla. Stat. §§  
132 120.569 and 120.57 to contest the recommendation.

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

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

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

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

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

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

173

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

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

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

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

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

217

- 218 a. After the hearing held by a hearing officer, and before the meeting where the  
219 Board will enter the final order of expulsion, students and their  
220 parents/guardian and/or representative may appear in a closed, private  
221 meeting with school board members pursuant to Policy 1.03(17), to express  
222 their views on the recommended penalty, such as if they believe mitigating  
223 circumstances contraindicate expulsion or would make a shorter term of  
224 expulsion appropriate. An individual's comments made during this closed  
225 session shall be limited strictly to three (3) minutes. Comments shall be  
226 limited to mitigation only. There shall be no retrial of the issues surrounding  
227 the facts of the incident that merited expulsion. The Board's vote on the  
228 expulsion and entry of the final order will occur, without mention of the  
229 student's name or other personally-identifiable information, at the general  
230 meeting following this closed session.
- 231
- 232 b. If the student/parent did not request a hearing, the student/parent or legal  
233 guardian/representative will have an opportunity to express their views on the  
234 recommended penalty by making public comment at the meeting where the  
235 Board will issue the final order. Like other speakers offering comments on  
236 agenda items pursuant to Policy 1.03, such student/parent or legal guardian/  
237 representative can provide input and insight to the Board (regarding the  
238 proposed expulsion).
- 239
- 240 c. In considering the Superintendent's recommendation, the Board should  
241 impartially consider what, under all the circumstances, the penalty should be,  
242 as stated in AGO 87-33.
- 243
- 244 d. After the Board votes on the expulsion, the student/parents/guardian/  
245 representative will be notified in writing of the Board's decision.
- 246
- 247 i. If the Board votes to expel, a written notice of expulsion will be mailed to  
248 the student/parent/guardian/representative. The notice will detail the  
249 length of the expulsion, that the expulsion is with services or without  
250 services, and where the student will receive educational services, if  
251 applicable. The length of expulsion will be reduced to reflect time already  
252 spent at an alternative site, unless the Board votes otherwise (such as if  
253 the offense is a violent act listed in Policy 5.1814).
- 254
- 255 ii. If the Board votes to decline the expulsion, a notification will be sent to  
256 the student/parent/guardian/representative and the student will be  
257 referred to his/her respective Area Office for placement.
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259 6. Re-Entry after Expiration of the Expulsion

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

265

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

274

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

276 LAWS IMPLEMENTED: §§ 1001.43(1)(e), 1002.20; 1006.07; 1006.08;  
277 1006.09(1)(c)2; 1006.13, Fla. Stat.

278

279 HISTORY: NEW: / /04



Legal Signoff:

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

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Date

### Expulsion Process

