

POLICY 5.1817

5-H I recommend the Board approve 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, 2004. The adoption notice was duly advertised on April 26, 2004. To confirm changes discussed on June 21, the item is being re-cast as a first reading for June 28.
- 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 charterschool 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 250-251 clarifies that "The length of expulsion will be reduced to reflect time already spent at an alternative site, unless the Board votes otherwise."
- 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

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

2. **General Provisions**

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

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

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

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

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

governing body shall forward it to the Superintendent.

principal shall make the expulsion recommendation to the charter school's

governing body and, if the governing body approves the recommendation, the

3. Pre-Hearing Procedures

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

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

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

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

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

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, will meet, to the extent possible, each week during the school year.

i. Each Committee meeting will be conducted by an attorney from the Department of Legal Services, 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, and, by majority vote, determine whether the packet shall be forwarded to the Superintendent for a recommendation of expulsion to the School Board.

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 the next Screening Committee meeting. The principal will be allowed only until that next meeting (generally 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.

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.

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

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.

a. Notice.-- 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. Pursuant to Fla. Stat. §§ 1006.07(1)(a) and 1006.08, the notice shall contain the following:

A statement of the charges for which expulsion will be recommended;

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

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<u>iii.</u> Notification that the student has the right to be represented by an attorney and to call witnesses to testify at the hearing on the student's behalf.

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

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

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

ii. Pursuant to AGO 2001-05, the student may request a hearing under Fla.

Stat. § 120.57(1) when there is a disputed issue of material fact or under § 120.57(2) if there is no disputed issue of material fact. In either type of proceeding, the hearing shall be informal in nature and the rules of evidence will apply loosely.

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

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

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

Although the Board shall make the final decision on the Superintendent's

expulsion recommendation, an impartial volunteer hearing officer from the

community will preside over the hearing as authorized by Policy 4.114.

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

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

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

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

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

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

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

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

i. If the Board votes to expel, a written notice of expulsion will be mailed to the student/parent/guardian/representative. The notice will detail the length of the expulsion, that the expulsion is with services or without services, and where the student will receive educational services, if applicable. The length of expulsion will be reduced to reflect time already spent at an alternative site, unless the Board votes otherwise.

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

6. Re-Entry after Expiration of the Expulsion

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

- No student, after expiration of the expulsion, shall be transitioned back to the 264 b. school where the incident meriting expulsion occurred unless the principal of 265 266 the school is first notified and given the option of accepting the student back into that school. In accordance with the Fla. Stat. §§ 1002.20(5) and 267 268 1006.13(5), students who have been victims of certain felony offenses by 269 other students, as well as the siblings of the student victims, may need to be 270 kept separated from the student offender at school and during school 271 transportation. 272
- 273 STATUTORY AUTHORITY: §§ 1001.41(2); 1001.43(1), 1006.07, 1006.09(1)(c)2.
- 274 <u>LAWS IMPLEMENTED: §§ 1001.43(1)(e), 1002.20; 1006.07; 1006.08;</u>
- 275 <u>1006.09(1)(c)2; 1006.13, Fla. Stat.</u> 276

277 <u>HISTORY: NEW: / /04</u>

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Legal Signoff:	
The Legal Department has revious sufficient for development by the	ewed proposed Policy 5.1817 and finds it legally e Board.
Attorney	 Date

