

POLICY 5.1817

5-C I recommend the Board approve the proposed new Policy 5.1817, to be entitled "Student Expulsion."

[Contact: Corey Smith, Esq., 434-8500.]

Development

CONSENT ITEM

- This new Policy will provide 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).

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13 2. General Provisions

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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 "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."

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

43 request to the governing body, which submits the recommendation to the
44 Superintendent.

- 45
46 d. Only the School Board, by vote in a regular or special meeting, may officially
47 expel a student (including a student recommended for expulsion by a charter
48 school's governing body) from the regular education program of the District
49 school system.

50 51 3. Pre-Hearing Procedures

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

- 61
62 b. *Other Measures.*-- As required by Fla. Stat. § 1006.09(1)(c), "Any
63 recommendation of expulsion shall include a detailed report by the principal or
64 the principal's designated representative on the alternative measures taken
65 prior to the recommendation of expulsion."

- 66
67 c. *Legal Review.*-- All principal expulsion-recommendation packets shall be
68 forwarded within two work days to the Department of Legal Services for
69 review. An attorney from the Department of Legal Services shall review each
70 packet for legal sufficiency.

- 71
72 i. If the attorney finds the packet is not legally sufficient, the attorney shall
73 communicate with the reporting school to determine if it is possible to
74 make the packet legally sufficient. If the packet cannot sustain legal
75 review, the expulsion process shall end and the student shall be referred
76 to his/her respective Area Office for placement into the regular school
77 program.

- 78
79 ii. If the packet is legally sufficient, it shall be forwarded to the Expulsion
80 Screening Committee.

- 81
82 d. *Expulsion Screening Committee.*-- A committee consisting of three
83 principals/designees, one each from an elementary, middle, and high school,
84 plus an area administrator/designee, will meet, to the extent possible, each
85 week during the school year.

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

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

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

109
110 B. If at that next meeting the Committee decides to forward the
111 recommendation to the Superintendent, the expulsion process will
112 proceed.

113
114 **4. Due Process Procedures.-- Pursuant to Fla. Stat. § 1002.20(4)(b), “public school**
115 **students and their parents have the right to written notice of a recommendation of**
116 **expulsion, including the charges against the student and a statement of the right of**
117 **the student to due process.” Due process includes notice and opportunity to be**
118 **heard.**

119
120 **a. Notice.-- The student, and the parents/guardian of the student, who the**
121 **Superintendent will recommend for expulsion shall be issued written notice of**
122 **the recommendation of expulsion. Pursuant to Fla. Stat. §§ 1006.07(1)(a) and**
123 **1006.08, the notice shall contain the following:**

124
125 **i. A statement of the charges for which expulsion will be recommended;**

126
127 **ii. Notification that the student has a right to a hearing under Fla. Stat. §§**
128 **120.569 and 120.57 to contest the recommendation.**

129

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

132
133 iv. Notification of the provisions of the Sunshine Law and that the parent may
134 elect to have the hearing held in public; otherwise, it shall be closed to the
135 public.

136
137 **b. Opportunity to Be Heard.-- Every student who is recommended for**
138 **expulsion shall have the right to a hearing, to tell his/her side of the story or to**
139 **explain or refute the evidence against him/her, in denial or mitigation of the**
140 **charges.**

141
142 i. It shall be the responsibility of the student/parent/guardian/representative
143 to request a hearing, through the Department of Legal Services, in a
144 timely fashion--within fifteen (15) days after receipt of the notice of
145 recommendation for expulsion. If no request for a hearing is timely made,
146 the student is deemed to have waived the right to a hearing; the
147 recommendation for expulsion shall be forwarded to the School Board for
148 vote; and the facts of the charges in the notice will be deemed by the
149 School Board to be true.

150
151 ii. Pursuant to AGO 2001-05, the student may request a hearing under Fla.
152 Stat. § 120.57(1) when there is a disputed issue of material fact or under
153 § 120.57(2) if there is no disputed issue of material fact. In either type of
154 proceeding, the hearing shall be informal in nature and the rules of
155 evidence will apply loosely.

156
157 A. *Disputed Issues of Material Fact.--* In cases where the student will
158 contest a material issue of fact such as denying that he/she actually
159 committed the act as charged, the hearing officer will serve as the
160 finder of fact. The burden of proof rests with the School District.
161 When material facts are in dispute, the standard of proof is the
162 "preponderance of the of the evidence" i.e., whether it is reasonable
163 to conclude from all the evidence submitted by both the School
164 District and the student that the pupil did commit the violation with
165 which he or she is charged as the basis for expulsion. After the
166 conclusion of the hearing the hearing officer shall issue written
167 findings of fact as to whether the evidence presented supports the
168 charge(s) against the student.

169
170 B. *No Disputed Issues of Material Fact.--* When the student does not
171 dispute the factual basis for the expulsion recommendation, the
172 student is entitled to a hearing under Fla. Stat. § 120.57(2), to
173 address whether the undisputed material facts constitute a violation

174 of School Board Policy, State Board of Education Rules, and/or state
175 or federal statutes, forming a lawful basis for expulsion.
176

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

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

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

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

212 a. After the hearing held by a hearing officer, and before the meeting where the
213 Board will enter the final order of expulsion, students and their
214 parents/guardian and/or representative may appear in a closed, private
215 meeting with school board members pursuant to Policy 1.03(17), to express
216 their views on the recommended penalty, such as if they believe mitigating
217 circumstances contraindicate expulsion or would make a shorter term of

218 expulsion appropriate. An individual's comments made during this closed
219 session shall be limited strictly to three (3) minutes. Comments shall be
220 limited to mitigation only. There shall be no retrial of the issues surrounding
221 the facts of the incident, which merited expulsion. The Board's vote on the
222 expulsion and entry of the final order will occur, without mentioning the
223 student's name or other personally-identifiable information, at the general
224 meeting following this closed session.

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

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

236
237 d. After the Board votes on the expulsion in the general meeting, the
238 student/parents/guardian/representative will be notified in writing of the
239 Board's decision.

240
241 i. If the Board votes to expel, a written notice of expulsion will be mailed to
242 the student/parent/guardian/representative. The notice will detail the
243 length of the expulsion, that the expulsion is with services or without
244 services, and where the student will receive educational services, if
245 applicable. If the vote occurs more than sixty (60) calendar days after the
246 incident giving rise to the expulsion, the length of expulsion should be
247 reduced to reflect time already spent at an alternative site.

248
249 ii. If the Board votes to decline the expulsion, a notification will be sent to
250 the student/parent/guardian/representative and the student will be
251 referred to his/her respective Area Office for placement.

252 6. Re-Entry after Expiration of the Expulsion

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

259
260 b. No student, after expiration of the expulsion, shall be transitioned back to the
261 school where the incident meriting expulsion occurred unless the principal of

262 the school is first notified and given the option of accepting the student back
263 into that school. In accordance with the Fla. Stat. §§ 1002.20(5) and
264 1006.13(5), students who have been victims of certain felony offenses by
265 other students, as well as the siblings of the student victims, may need to be
266 kept separated from the student offender at school and during school
267 transportation.
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269 STATUTORY AUTHORITY: §§ 1001.41(2); 1001.43(1), 1006.07, 1006.09(1)(c)2.

270 LAWS IMPLEMENTED: §§ 1001.43(1)(e), 1002.20; 1006.07; 1006.08;
271 1006.09(1)(c)2; 1006.13, Fla. Stat.

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273 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