



POLICY 5.1817

4-A Board discussion of the proposed new Policy 5.1817, to be entitled "Student Expulsion."

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

[Adoption] (**discussion** only)

- The Board approved development of this Policy on April 19, 2004. The adoption notice was duly advertised on April 26, 2004.
- Pursuant to requests of the Board on April 19, 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.*"
 - Additionally, lines 250-254 clarifies that "If the Board vote to expel occurs more than sixty (60) calendar days after the incident giving rise to the expulsion *and the delay was not caused by the student's parent/guardian/representative*, the length of expulsion will be reduced to reflect time already spent (beyond the first sixty (60) calendar days) at an alternative site."
- 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
2
3
4
5
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
244 /guardian/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. If the Board vote to expel occurs more than sixty (60) calendar
251 days after the incident giving rise to the expulsion and the delay was not
252 caused by the student's parent/guardian/representative, the length of
253 expulsion will be reduced to reflect time already spent (beyond the first
254 sixty (60) calendar days) at an alternative site.

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

259 260 6. Re-Entry after Expiration of the Expulsion

261
262 a. Upon the expiration of the expulsion period, the student's Area Office shall
263 place the student back into the regular education program of the School

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

