

Berkeley Unified School District

AR 5144.3

Expulsions

This AR provides the implementing regulations for BP 5144.3. These regulations govern expulsions, whereas AR 5144.1 governs suspensions.

Definitions

“Accused student” means the student against whom expulsion proceedings are initiated or contemplated.

“Expellable offense” means an offense for which expulsion is permitted under the Education Code.

“Complainant” means the student who is the alleged victim of another student’s actions, regardless of whether a formal complaint has been filed.

“Witness” means a person, other than the accused student or the complainant, who has, or may have, information related to an incident for which expulsion

Expellable offenses

The legal grounds for expulsion are listed in the Education Code. The Board's direction with respect to how different alleged offenses are to be treated is detailed in BP 5144.3.

[Ed Code sec. 48915(c), 48915(a), 48900.]

Legal counsel for students facing expulsion

At the earliest possible moment that the Superintendent or designee is aware that a student may face expulsion proceedings, the Superintendent or designee shall inform the accused student and his or her parent/guardian of any free legal counsel of which the District is aware. The Superintendent or designee shall provide to the student and his or her parent/guardian the name, phone numbers, office address, and email addresses of any such legal counsel, and shall encourage the student and his or her parent/guardian to secure free or retained legal counsel.

If the Superintendent or designee is aware of an office or agency that provides free legal counsel to students facing expulsion, the Superintendent or designee shall, with consent of the accused student's parent/guardian, provide the student's contact information to such agency or office in order to facilitate the provision of free representation to the student facing expulsion.

Extension of suspensions pending expulsion

The process for determining whether a suspension should be extended pending expulsion is detailed in Board Policy 5144.3.

[BP 5144.3]

Instruction during extended suspension

Pursuant to Board Policy, the District shall ensure that any accused student whose suspension is extended pending an expulsion hearing is provided instruction during the period of extended suspension.

In order to effectuate this policy, the Superintendent or designee shall ensure that procedures are in place to provide appropriate instruction for students serving extended suspensions. The instruction shall be comparable to the instruction received in Berkeley Independent Study, and/or the Special Education Independent Program.

All instruction and related services for students with disabilities shall continue during extended suspension, in accordance with state and federal law.

Use of restorative justice or other alternative resolutions in expulsion cases

Board policy encourages the use of restorative justice and alternative

The rights afforded to accused students in the expulsion process are governed by Education Code and Board Policy.

[Ed. Code sec. 48918; BP 5144.3]

Timing of Expulsion Hearing

The accused student is entitled to a hearing to determine whether the student should be expelled. The hearing shall be held within 30 school days after the principal or Superintendent or designee determines that

3. All documents and evidence collected in the course of the case investigation (redacted only for attorney work product and student names) that the Superintendent or designee intends to introduce at the hearing, as well as any exculpatory evidence (including evidence that is, or potentially is, favorable to the accused student) regardless of whether the Superintendent or designee intends to introduce it at the hearing;

4. A statement informing the accused student of his/her right to have teachers of his/her choice testify in support of the accused student and of the right to call other witnesses who have relevant testimony to provide, under subpoena if necessary and where allowed by law;

5. A list of any and all witnesses the District intends to have testify at the hearing;

6. All records and statements that the District intends to rely on at the hearing;

7. A copy of district disciplinary rules which relate to the alleged violation;

8. Notification of the accused student's or parent/guardian's obligation, pursuant to Education Code [48915.1](#), to provide information about the student's status in the district to any other district in which the student seeks enrollment.

9. The opportunity for the student or the student's parent/guardian to appear in person or be represented by legal counsel or by a nonattorney advisor.

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[BP 5144.3; Ed Code section 48918(b).]

Conduct of the expulsion hearing

As a general matter, administrative panels will be appointed to hear expulsion cases in lieu of the Governing Board. Board Policy details the role of the administrative panel in the expulsion hearing process.

[BP 5144.3.]

When constituting the Administrative Panel, the Superintendent or designee shall appoint an impartial panel composed of three or more certificated personnel, none of whom shall be members of the Board or on the staff of the school in which the complainant or accused student is enrolled, or on the staff of the school at which the alleged incident took place. The Superintendent or designee shall provide the panelists prior to the hearing with the names of the accused student and complainant (if any), in order to determine whether each of the panelists is capable of fairly and impartially sitting on the panel. If a parent/guardian of either the accused student or the complainant, or any members of either student's immediate family, is an employee of the District, the employee's name shall be provided to the prospective panel members in order to determine whether there is any reason any panel member cannot serve impartially. Prior to the beginning of the hearing, each member of the panel shall be polled to determine if they can be impartial in the case.

[Ed Code sec. 48919.5(a).]

Notwithstanding the provisions of Government Code [54953](#) and Education Code [35145](#), the Administrative Panel shall conduct a hearing to consider the expulsion of the student in a session closed to the public unless the student requests in writing at least five days prior to the hearing that the hearing be a public meeting.

[Ed Code 48918(c)(1).]

If a hearing that involves a charge of sexual assault or sexual battery is to be conducted in public, a complainant shall have the right to have his/her testimony heard in closed session when testifying in public would threaten serious psychological harm to the witness and when there are no alternative procedures to avoid the threatened harm, including but not limited to videotaped deposition or contemporaneous examination in another place communicated to the hearing room by closed-circuit television.

[Ed Code sec. 48918(c)(3).]

Before commencing a student expulsion hearing, the Governing Board may issue subpoenas, at the request of either the accused student or the Superintendent or designee, for the personal appearance at the hearing of any person who actually witnessed the action that gave rise to the recommendation for expulsion. After the hearing has commenced, the Administrative Panel may issue such subpoenas at the request of the accused student, the Superintendent or designee, or the county superintendent of schools. All subpoenas shall be issued in accordance with the Code of Civil Procedure [1985-1985.2](#) and enforced in accordance with Government Code [11455.20](#) (formerly 11525).

[Ed Code sec. 48918(i)(1).]

The District shall also allow and compensate teachers to attend the hearing in support of the accused student or the complainant(s) (if any), to the extent possible and without violating the confidentiality of the complainant(s) or the accused student. Teachers may testify on behalf of the accused student with respect to both the offense(s) charged, and the secondary findings that must be made in all cases except those alleging a violation of Education Code section 48915(c), namely that alternative means of correction are not feasible or have repeatedly failed to bring about proper conduct, or that due to the nature of the act, the presence of the accused student causes a continuing danger to the physical safety of the accused student or others.

[[Ed Code sec. 48918(f)(2), 48915(b), (e); BP 5144.3.]

If one or both support persons are also witnesses, the hearing shall be conducted according to Penal Code [868.5](#).

[Ed Code sec. 48918(b)(5).]

Evidence of specific instances of prior sexual conduct of a complainant shall be presumed inadmissible and shall not be heard unless the person conducting the hearing determines that extraordinary circumstances require the evidence to be heard. Before such a determination is made, the complainant shall be given notice and an opportunity to oppose the introduction of this evidence with the assistance of a parent/guardian, legal counsel, or other support person. Reputation or opinion evidence regarding the sexual behavior of the complainant is not admissible for any purpose.

[Ed Code 48918(h)(2).]

In all cases in which a complainant is called to testify in an expulsion hearing involving an alleged violation of Education Code section 48900(n), in order to facilitate a free and accurate statement of the experiences of the complainant and to prevent discouragement of complaints, the hearing panel shall provide a nonthreatening environment, including: 1) a room separate from the hearing room for the use of the complainant before and during breaks in testimony; 2) at the discretion of the person conducting the hearing, the complainant shall be allowed reasonable periods of relief from examination and cross-examination during which he/she may leave the hearing room; and 3) the person conducting the hearing may: (a) Arrange the seating within the hearing room so as to facilitate a less intimidating environment for the complainant; (b) Limit the time for taking the testimony of a complainant to the hours he/she is normally in school, if there is no good cause to take the testimony during other hours

The administrative panel shall, within three school days after the hearing, determine whether to recommend expulsion of the student to the Board. If expulsion is not recommended, the student shall be immediately reinstated. The administrative panel shall submit a detailed, written factual finding to the Board explaining its reasoning for its decision.

[Ed Code 48918(e).]

Board Policy requires that a copy of the administrative panel's findings shall be provided to the accused student. If the administrative panel's recommendation proceeds to the Board for review, the accused student shall be provided, prior to the Board's consideration, the complete documentation on the accused student's case that is provided to the Board.

[BP 5144.3.]

Board Policy details the options available to the Board following receipt of the administrative panel's recommendations.

[BP 5144.3.]

The Board's decision on whether to expel a student shall be made within 10 school days after the conclusion of the hearing, unless the student requests in writing that the decision be postponed. If the Board does not meet on a weekly basis, its decision on whether to expel a student shall be made within 40 school days after the student is removed from his/her school of attendance, unless the student requests in writing that the decision be postponed.

[Ed Code. 48918(a)(2).]

Complainants' Rights in the Expulsion Process

As detailed in the Board Policy, complainants have the right to timely information about expulsion proceedings that pertain to their safety and access to academic and extracurricular offerings, as well as information that would reasonably influence their decisions regarding further contact with accused students, so long as the provision of this information does not violate the District's obligations to the confidentiality and privacy of the accused student. When permitted by law, the complainant shall be informed whether and when the accused student is returning to campus after a period of extended suspension or expulsion.

[BP 5144.3.]

In order to ensure the complainant's safety and access to education throughout the expulsion process, the Superintendent or designee shall develop a safety

2. The fact that a description of readmission procedures will be made available to the accused student and his/her parent/guardian, and his/her counsel (if any);
3. Notice of the right to appeal the expulsion to the County Board of Education;

under what circumstances the Superintendent or designee may recommend, and the Board may approve, early readmission.

[Ed Code sec. 48917; BP 5144.3]

If the Board conducts the hearing and reaches a decision not to expel, this decision shall be final and the student shall be reinstated immediately.

Suspended enforcement of expulsions orders

Board policy requires that the Superintendent or designee ensure that any

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At the beginning of each school year, the principal of each school shall ensure that all students and parents/guardians are notified in writing of all school and district rules related to discipline, suspension, and expulsion, and shall ensure that this communication is consistent with Board Policy 5144.3 and these