

## DAILEY ELEMENTARY CHARTER SCHOOL

### **SUSPENSION AND EXPULSION POLICY**

This Pupil Suspension and Expulsion Policy has been established by the Morris E. Dailey Elementary School (“Charter School”) Governing Board, Fresno Innovative Charter Schools, Inc. (“FICS”) in order to promote learning and protect the safety and well being of all students. In creating this policy, the Charter School has reviewed Education Code Section 48900 *et seq.* which describes the non-charter schools’ list of offenses and procedures to establish its list of offenses and procedures for suspensions and expulsions. The language that follows closely mirrors the language of Education Code Section 48900 *et seq.* The Charter School is committed to annual review of policies and procedures surrounding suspensions and expulsions and, as necessary, modification of the lists of offenses for which students are subject to suspension or expulsion.

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When the Policy is violated, it may be necessary to suspend or expel a student from regular classroom instruction. This policy shall serve as the Charter School’s policy and procedures for student suspension and expulsion and it may be amended from time to time without the need to amend the charter so long as the amendments comport with legal requirements. Charter School staff shall enforce disciplinary rules and procedures fairly and consistently among all students. This Policy and its Procedures will be printed and distributed as part of the Student Handbook and will clearly describe discipline expectations. Corporal punishment shall not be used as a disciplinary measure against any student. Corporal punishment includes the willful infliction of or willfully causing the infliction of physical pain on a student. For purposes of the Policy, corporal punishment does not include an employee’s use of force that is reasonable and necessary to protect the employee, students, staff or other persons or to prevent damage to school property.

The Charter School administration shall ensure that students and their parents/guardians are notified in writing upon enrollment of all discipline policies and procedures. The notice shall state that this Policy and Procedures are available on request at the Executive Director’s office.

Suspended or expelled students shall be excluded from all school and school-related activities unless otherwise agreed during the period of suspension or expulsion.

A student identified as an individual with disabilities or for whom the Charter School has a basis of knowledge of a suspected disability pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (“IDEIA”) or who is qualified for services under Section 504 of the Rehabilitation Act of 1973 (“Section 504”) is subject to the same grounds for suspension and expulsion and is accorded the same due process procedures applicable to general education students except when federal and state law mandates additional or different procedures. The Charter School will follow all applicable federal and state laws including but not limited to the California Education Code, when imposing any form of discipline on a student identified as an

individual with disabilities or for whom the Charter School has a basis of knowledge of a suspected disability or who is otherwise qualified for such services or protections in according due process to such students.

No student shall be involuntarily removed by the Charter School for any reason unless the parent or guardian of the student has been provided written notice of intent to remove the student no less than five schooldays before the effective date of the action. The written notice shall be in the native language of the Procedures specified below for suspensions, before the effective date of the action. If the student's parent, student or the student's parent or guardian or, if the student is a foster child or youth or a homeless child or youth, the student's educational rights holder, and shall inform him or her of the right to initiate the guardian, or educational rights holder initiates the procedures specified below for suspensions, the student shall remain enrolled and shall not be removed until the Charter School issues a final decision. As used herein, "involuntarily removed" includes disenrolled, dismissed, transferred, or terminated, but does not include suspensions or expulsions pursuant to the suspension and expulsion procedures described below.

#### **A. Grounds for Suspension and Expulsion of Students**

A student may be suspended or expelled for prohibited misconduct if the act is related to school activity or school attendance occurring at anytime including but not limited to: a) while on school grounds; b) while going to or coming from school; c) during the lunch period, whether on or off the school campus; d) during, going to, or coming from a school-sponsored activity.

#### **B. Enumerated Offenses**

**1. Discretionary Suspension Offenses.** Students may be suspended for any of the following acts when it is determined the pupil:

- a) Caused, attempted to cause, or threatened to cause physical injury to another person.
- b) Willfully used force or violence upon the person of another, except self-defense.
- c) Unlawfully possessed, used, furnished, or was under the influence of any controlled substance, as defined in Health and Safety Code Sections 11053-11058, alcoholic beverage, or intoxicant of any kind.
- d) Unlawfully offered, arranged, or negotiated to sell any controlled substance as defined in Health and Safety Code Sections 11053-11058, alcoholic beverage or intoxicant of any kind, and then sold, delivered or otherwise furnished to any

person another liquid substance or material and represented same as controlled substance, alcoholic beverage or intoxicant.

- e) Committed or attempted to commit robbery or extortion.
- f) Caused or attempted to cause damage to school property or private property, which includes but is not limited to, electronic files and databases.
- g) Stole or attempted to steal school property or private property, which includes but is not limited to, electronic files and databases..
- h) Possessed or used tobacco or products containing tobacco or nicotine products, including but not limited to cigars, cigarettes, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets and betel. This section does not prohibit the use of his or her own prescription products by a pupil.
- i) Committed an obscene act or engaged in habitual profanity or vulgarity.
- j) Unlawfully possessed or unlawfully offered, arranged, or negotiated to sell any drug paraphernalia, as defined in Health and Safety Code Section 11014.5.
- k) Knowingly received stolen school property or private property, which includes but is not limited to, electronic files and databases.
- l) Possessed an imitation firearm, i.e.: a replica of a firearm that is so substantially similar in physical properties to an existing firearm as to lead a reasonable person to conclude that the replica is a firearm.
- m) Harassed, threatened, or intimidated a student who is a complaining witness or witness in a school disciplinary proceeding for the purpose of preventing that student from being a witness and/or retaliating against that student for being a witness.
- n) Unlawfully offered, arranged to sell, negotiated to sell, or sold the prescription drug Soma.
- o) Engaged in, or attempted to engage in hazing. For the purposes of this subdivision, “hazing” means a method of initiation or preinitiation into a pupil organization or body, whether or not the organization or body is officially recognized by an educational institution, which is likely to cause serious bodily injury or personal degradation or disgrace resulting in physical or mental harm to a former, current, or prospective pupil. For purposes of this section, “hazing” does not include athletic events or school-sanctioned events.

- p) Made terroristic threats against school officials and/or school property, which includes but is not limited to, electronic files and databases. For purposes of this section, “terroristic threat” shall include any statement, whether written or oral, by a person who willfully threatens to commit a crime which will result in death, great bodily injury to another person, or property damage in excess of one thousand dollars (\$1,000), with the specific intent that the statement is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family’s safety, or for the protection of school property, which includes but is not limited to, electronic files and databases, or the personal property of the person threatened or his or her immediate family.
- q) Committed sexual harassment, as defined in Education Code Section 212.5. For the purposes of this section, the conduct described in Section 212.5 must be considered by a reasonable person of the same gender as the victim to be sufficiently severe or pervasive to have a negative impact upon the individual’s academic performance or to create an intimidating, hostile, or offensive educational environment. This section shall apply to pupils in any of grades 4 to 12, inclusive.
- r) Caused, attempted to cause, threatened to cause or participated in an act of hate violence, as defined in subdivision (e) of Section 233 of the Education Code. This section shall apply to pupils in any of grades 4 to 12, inclusive.
- s) Intentionally harassed, threatened or intimidated school personnel or volunteers and/or a student or group of students to the extent of having the actual and reasonably expected effect of materially disrupting class work, creating substantial disorder and invading the rights of either school personnel or volunteers and/or student(s) by creating an intimidating or hostile educational environment. This section shall apply to pupils in any of grades 4 to 12, inclusive.
- t) Engaged in an act of bullying, including, but not limited to, bullying committed by means of an electronic act.
  - 1) “Bullying” means any severe or pervasive physical or verbal act or conduct, including communications made in writing or by means of an electronic act, and including one or more acts committed by a student or group of students which would be deemed hate violence or harassment, threats, or intimidation, which are directed toward one or more students that has or can be reasonably predicted to have the effect of one or more of the following:

- i. Placing a reasonable student (defined as a student, including, but is not limited to, a student with exceptional needs, who exercises average care, skill, and judgment in conduct for a person of his or her age, or for a person of his or her age with exceptional needs) or students in fear of harm to that student's or those students' person or property.
  - ii. Causing a reasonable student to experience a substantially detrimental effect on his or her physical or mental health.
  - iii. Causing a reasonable student to experience substantial interference with his or her academic performance.
  - iv. Causing a reasonable student to experience substantial interference with his or her ability to participate in or benefit from the services, activities, or privileges provided by the Charter School.
- 2) "Electronic Act" means the creation or transmission originated on or off the school site, by means of an electronic device, including, but not limited to, a telephone, wireless telephone, or other wireless communication device, computer, or pager, of a communication, including, but not limited to, any of the following:
- i. A message, text, sound, video, or image.
  - ii. A post on a social network Internet Web site including, but not limited to:
    - (a) Posting to or creating a burn page. A "burn page" means an Internet Web site created for the purpose of having one or more of the effects as listed in subparagraph (1) above.
    - (b) Creating a credible impersonation of another actual pupil for the purpose of having one or more of the effects listed in subparagraph (1) above. "Credible impersonation" means to knowingly and without consent impersonate a pupil for the purpose of bullying the pupil and such that another pupil would reasonably believe, or has reasonably believed, that the pupil was or is the pupil who was impersonated.
    - (c) Creating a false profile for the purpose of having one or more of the effects listed in subparagraph (1) above. "False profile" means a profile of a fictitious pupil or a profile using the likeness or attributes of an actual pupil other than the pupil who created the false profile.
  - iii. An act of cyber sexual bullying.
    - (a) For purposes of this clause, "cyber sexual bullying" means the dissemination of, or the solicitation or incitement to disseminate, a photograph or other visual recording by a pupil to another pupil or to school personnel by means of an electronic act that has or can be reasonably predicted to have one or more of the effects described

in subparagraphs (i) to (iv), inclusive, of paragraph (1). A photograph or other visual recording, as described above, shall include the depiction of a nude, semi-nude, or sexually explicit photograph or other visual recording of a minor where the minor is identifiable from the photograph, visual recording, or other electronic act.

(b) For purposes of this clause, “cyber sexual bullying” does not include a depiction, portrayal, or image that has any serious literary, artistic, educational, political, or scientific value or that involves athletic events or school-sanctioned activities.

3) Notwithstanding subparagraphs (1) and (2) above, an electronic act shall not constitute pervasive conduct solely on the basis that it has been transmitted on the Internet or is currently posted on the Internet.

(v) A pupil who aids or abets, as defined in Section 31 of the Penal Code, the infliction or attempted infliction of physical injury to another person may be subject to suspension, but not expulsion, except that a pupil who has been adjudged by a juvenile court to have committed, as an aider and abettor, a crime of physical violence in which the victim suffered great bodily injury or serious bodily injury shall be subject to discipline pursuant to subdivision (1)(a)-(b).

(w) Possessed, sold, or otherwise furnished any knife unless, in the case of possession of any object of this type, the student had obtained written permission to possess the item from a certificated school employee, with the Executive Director or designee’s concurrence.

**2. Non-Discretionary Suspension Offenses:** Students must be suspended and recommended for expulsion for any of the following acts when it is determined the pupil:

- a) Possessed, sold, or otherwise furnished any firearm, explosive, or other dangerous object, as defined in Non-Discretionary Expellable Offenses below, unless in the case of possession of any object of this type, the students had obtained written permission to possess the item from a certificated school employee, with the Executive Director or designee’s concurrence.
- b) Brandished a knife, as defined in Education Code Section 48915(g), at another person.
- c) Unlawfully sold any controlled substance, as defined in Health and Safety Code Sections 11053-11058.

- d) Committed or attempted to commit a sexual assault as defined in Penal Code Sections 261, 266c, 286, 288, 288a or 289, or committed a sexual battery as defined in Penal Code Section 243.4.

**3. Discretionary Expellable Offenses:** Students may be recommended for expulsion for any of the following acts when it is determined the pupil:

- a) Caused, attempted to cause, or threatened to cause physical injury to another person.
- b) Willfully used force or violence upon the person of another, except self-defense.
- c) Unlawfully possessed, used, furnished, or was under the influence of any controlled substance, as defined in Health and Safety Code Sections 11053-11058, alcoholic beverage, or intoxicant of any kind.
- d) Unlawfully offered, arranged, or negotiated to sell any controlled substance as defined in Health and Safety Code Sections 11053-11058, alcoholic beverage or intoxicant of any kind, and then sold, delivered or otherwise furnished to any person another liquid substance or material and represented same as controlled substance, alcoholic beverage or intoxicant.
- e) Committed or attempted to commit robbery or extortion.
- f) Caused or attempted to cause damage to school property or private property, which includes but is not limited to, electronic files and databases.
- g) Stole or attempted to steal school property or private property, which includes but is not limited to, electronic files and databases.
- h) Possessed or used tobacco or products containing tobacco or nicotine products, including but not limited to cigars, cigarettes, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets and betel. This section does not prohibit the use of his or her own prescription products by a pupil.
- i) Committed an obscene act or engaged in habitual profanity or vulgarity.
- j) Unlawfully possessed or unlawfully offered, arranged, or negotiated to sell any drug paraphernalia, as defined in Health and Safety Code Section 11014.5.
- k) Knowingly received stolen school property or private property, which includes but is not limited to, electronic files and databases.

- l) Possessed an imitation firearm, i.e.: a replica of a firearm that is so substantially similar in physical properties to an existing firearm as to lead a reasonable person to conclude that the replica is a firearm.
- m) Harassed, threatened, or intimidated a student who is a complaining witness or witness in a school disciplinary proceeding for the purpose of preventing that student from being a witness and/or retaliating against that student for being a witness.
- n) Unlawfully offered, arranged to sell, negotiated to sell, or sold the prescription drug Soma.
- o) Engaged in, or attempted to engage in hazing. For the purposes of this subdivision, “hazing” means a method of initiation or preinitiation into a pupil organization or body, whether or not the organization or body is officially recognized by an educational institution, which is likely to cause serious bodily injury or personal degradation or disgrace resulting in physical or mental harm to a former, current, or prospective pupil. For purposes of this section, “hazing” does not include athletic events or school-sanctioned events.
- p) Made terroristic threats against school officials and/or school property, which includes but is not limited to, electronic files and databases. For purposes of this section, “terroristic threat” shall include any statement, whether written or oral, by a person who willfully threatens to commit a crime which will result in death, great bodily injury to another person, or property damage in excess of one thousand dollars (\$1,000), with the specific intent that the statement is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family’s safety, or for the protection of school property, which includes but is not limited to, electronic files and databases, or the personal property of the person threatened or his or her immediate family.
- q) Committed sexual harassment, as defined in Education Code Section 212.5. For the purposes of this section, the conduct described in Section 212.5 must be considered by a reasonable person of the same gender as the victim to be sufficiently severe or pervasive to have a negative impact upon the individual’s academic performance or to create an intimidating, hostile, or offensive educational environment. This section shall apply to pupils in any of grades 4 to 12, inclusive.

- r) Caused, attempted to cause, threatened to cause or participated in an act of hate violence, as defined in subdivision (e) of Section 233 of the Education Code. This section shall apply to pupils in any of grades 4 to 12, inclusive.
- s) Intentionally harassed, threatened or intimidated school personnel or volunteers and/or a student or group of students to the extent of having the actual and reasonably expected effect of materially disrupting class work, creating substantial disorder and invading the rights of either school personnel or volunteers and/or student(s) by creating an intimidating or hostile educational environment. This section shall apply to pupils in any of grades 4 to 12, inclusive.
- t) Engaged in an act of bullying, including, but not limited to, bullying committed by means of an electronic act.
  - 1) “Bullying” means any severe or pervasive physical or verbal act or conduct, including communications made in writing or by means of an electronic act, and including one or more acts committed by a student or group of students which would be deemed hate violence or harassment, threats, or intimidation, which are directed toward one or more students that has or can be reasonably predicted to have the effect of one or more of the following:
    - i. Placing a reasonable student (defined as a student, including, but is not limited to, a student with exceptional needs, who exercises average care, skill, and judgment in conduct for a person of his or her age, or for a person of his or her age with exceptional needs) or students in fear of harm to that student’s or those students’ person or property.
    - ii. Causing a reasonable student to experience a substantially detrimental effect on his or her physical or mental health.
    - iii. Causing a reasonable student to experience substantial interference with his or her academic performance.
    - iv. Causing a reasonable student to experience substantial interference with his or her ability to participate in or benefit from the services, activities, or privileges provided by the Charter School.
  - 2) “Electronic Act” means the creation or transmission originated on or off the school site, by means of an electronic device, including, but not limited to, a telephone, wireless telephone, or other wireless communication device, computer, or pager, of a communication, including, but not limited to, any of the following:
    - i. A message, text, sound, video, or image.
    - ii. A post on a social network Internet Web site including, but not limited to:

- (a) Posting to or creating a burn page. A “burn page” means an Internet Web site created for the purpose of having one or more of the effects as listed in subparagraph (1) above.
    - (b) Creating a credible impersonation of another actual pupil for the purpose of having one or more of the effects listed in subparagraph (1) above. “Credible impersonation” means to knowingly and without consent impersonate a pupil for the purpose of bullying the pupil and such that another pupil would reasonably believe, or has reasonably believed, that the pupil was or is the pupil who was impersonated.
    - (c) Creating a false profile for the purpose of having one or more of the effects listed in subparagraph (1) above. “False profile” means a profile of a fictitious pupil or a profile using the likeness or attributes of an actual pupil other than the pupil who created the false profile.
  - iii. An act of cyber sexual bullying.
    - (a) For purposes of this clause, “cyber sexual bullying” means the dissemination of, or the solicitation or incitement to disseminate, a photograph or other visual recording by a pupil to another pupil or to school personnel by means of an electronic act that has or can be reasonably predicted to have one or more of the effects described in subparagraphs (i) to (iv), inclusive, of paragraph (1). A photograph or other visual recording, as described above, shall include the depiction of a nude, semi-nude, or sexually explicit photograph or other visual recording of a minor where the minor is identifiable from the photograph, visual recording, or other electronic act.
    - (b) For purposes of this clause, “cyber sexual bullying” does not include a depiction, portrayal, or image that has any serious literary, artistic, educational, political, or scientific value or that involves athletic events or school-sanctioned activities.
- 3) Notwithstanding subparagraphs (1) and (2) above, an electronic act shall not constitute pervasive conduct solely on the basis that it has been transmitted on the Internet or is currently posted on the Internet.
- u) A pupil who aids or abets, as defined in Section 31 of the Penal Code, the infliction or attempted infliction of physical injury to another person may be subject to suspension, but not expulsion, except that a pupil who has been adjudged by a juvenile court to have committed, as an aider and abettor, a crime of physical violence in which the victim suffered great bodily injury or serious bodily injury shall be subject to discipline pursuant to subdivision (3)(a)-(b).

- v) Possessed, sold, or otherwise furnished any knife unless, in the case of possession of any object of this type, the student had obtained written permission to possess the item from a certificated school employee, with the Executive Director or designee's concurrence.

**4. Non-Discretionary Expellable Offenses:** Students must be recommended for expulsion for any of the following acts when it is determined pursuant to the procedures below that the pupil:

- a) Possessed, sold, or otherwise furnished any firearm, explosive, or other dangerous object unless, in the case of possession of any object of this type, the student had obtained written permission to possess the item from a certificated school employee, with the Executive Director or designee's concurrence.
- b) Brandished a knife, as defined in Education Code section 48915(g), at another person.
- c) Unlawfully sold any controlled substance, as defined in Health and Safety Code Sections 11053-11058.
- d) Committed or attempted to commit a sexual assault as defined in Penal Code Sections 261, 266c, 286, 288, 288a or 289, or committed a sexual battery as defined in Penal Code Section 243.4.

If it is determined by the Administrative Panel and/ or Board of Directors that a student has brought a fire arm or destructive device, as defined in Section 921 of Title 18 of the United States Code, on to campus or to have possessed a firearm or dangerous device on campus, the student shall be expelled for one year, pursuant to the Federal Gun Free Schools Act of 1994. In such instances, the pupil shall be provided due process rights of notice and a hearing as required in this policy.

The term "firearm" means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

The term "destructive device" means (A) any explosive, incendiary, or poison gas, including but not limited to: (i) bomb, (ii) grenade, (iii) rocket having a propellant charge of more than four ounces, (iv) missile having an explosive or incendiary

charge of more than one-quarter ounce, (v) mine, or (vi) device similar to any of the devices described in the preceding clauses.

### **C. Suspension Procedure**

Suspensions shall be initiated according to the following procedures:

#### **1. Conference**

Suspension shall be preceded, if possible, by a conference conducted by the Executive Director or the Executive Director's designee with the student and his or her parent and, whenever practical, the teacher, supervisor or Charter School employee who referred the student to the Executive Director or designee.

The conference may be omitted if the Executive Director or designee determines that an emergency situation exists. An "emergency situation" involves a clear and present danger to the lives, safety or health of students or Charter School personnel. If a student is suspended without this conference, both the parent/guardian and student shall be notified of the student's right to return to school for the purpose of a conference.

At the conference, the pupil shall be informed of the reason for the disciplinary action and the evidence against him or her and shall be given the opportunity to present his or her version and evidence in his or her defense in accordance with Education Code Section 47605(b)(5)(J)(i). This conference shall be held within two (2) school days, unless the pupil waives this right or is physically unable to attend for any reason including, but not limited to, incarceration or hospitalization. No penalties may be imposed on a pupil for failure of the pupil's parent or guardian to attend a conference with Charter School officials. Reinstatement of the suspended pupil shall not be contingent upon attendance by the pupil's parent or guardian at the conference.

#### **2. Notice to Parents/Guardians**

At the time of the suspension, an administrator or designee shall make a reasonable effort to contact the parent/guardian by telephone or in person. Whenever a student is suspended, the parent/guardian shall be notified in writing of the suspension and the date of return following suspension. This notice shall state the specific offense committed by the student. In addition, the notice may also state the date and time when the student may return to school. If Charter School officials wish to ask the parent/guardian to confer regarding matters pertinent to the suspension, the notice may request that the parent/guardian respond to such requests without delay.

#### **3. Suspension Time Limits/Recommendation for Expulsion**

Suspensions, when not including a recommendation for expulsion, shall not exceed five (5) consecutive school days per suspension. Upon a recommendation of expulsion by the Executive Director or Executive Director's designee, the pupil and the pupil's guardian or representative will be invited to a conference to determine if the suspension for the pupil should be extended pending an expulsion hearing. In such instances when the Charter School has determined a suspension period shall be extended, such extension shall be made only after a conference is held with the pupil or the pupil's parents, unless the pupil and the pupil's parents fail to attend the conference.

This determination will be made by the Executive Director or designee upon either of the following: 1) the pupil's presence will be disruptive to the education process; or 2) the pupil poses a threat or danger to others. Upon either determination, the pupil's suspension will be extended pending the results of an expulsion hearing.

#### **D. Authority to Expel**

As required by Education Code Section 47605(b)(5)(J)(ii), students recommended for expulsion are entitled to a hearing adjudicated by a neutral officer to determine whether the student should be expelled. The procedures herein provide for such a hearing and the notice of said hearing, as required by law.

A student may be expelled either by the neutral and impartial Charter School Board following a hearing before it or by the Charter School Board upon the recommendation of a neutral and impartial Administrative Panel to be assigned by the Board as needed. The Administrative Panel shall consist of at least three (3) members who are certificated and neither a teacher of the pupil nor a member of the Charter School Board. Each entity shall be presided over by a designated neutral hearing chairperson. The Administrative Panel may recommend expulsion of any student found to have committed an expellable offense, and the Board of Directors shall make the final determination.

#### **E. Expulsion Procedures**

Students recommended for expulsion are entitled to a hearing to determine whether the student should be expelled. Unless postponed for good cause, the hearing shall be held within thirty (30) school days after the Executive Director or designee determines that the pupil has committed an expellable offense.

Written notice of the hearing shall be forwarded to the student and the student's parent/guardian at least ten (10) calendar days before the date of the hearing. Upon mailing the notice, it shall be

deemed served upon the pupil. Consistent with Education Code section 47605(b)(5)(J), the notice shall include:

1. The date and place of the expulsion hearing;
2. A statement of the specific facts, charges and offenses upon which the proposed expulsion is based;
3. A copy of the Charter School's disciplinary rules which relate to the alleged violation;
4. Notification of the student's or parent/guardian's obligation to provide information about the student's status at the Charter School to any other school district or school to which the student seeks enrollment;
5. The opportunity for the student and/or the student's parent/guardian to appear in person or to employ and be represented by counsel or a non-attorney advisor;
6. The right to inspect and obtain copies of all documents to be used at the hearing;
7. The opportunity to confront and question all witnesses who testify at the hearing;
8. The opportunity to question all evidence presented and to present oral and documentary evidence on the student's behalf including witnesses.

#### **F. Special Procedures for Expulsion Hearings Involving Sexual Assault or Battery Offenses**

The Charter School may, upon a finding of good cause, determine that the disclosure of either the identity of the witness or the testimony of that witness at the hearing, or both, would subject the witness to an unreasonable risk of psychological or physical harm. Upon this determination, the testimony of the witness may be presented at the hearing in the form of sworn declarations that shall be examined only by the Charter School or the hearing officer. Copies of these sworn declarations, edited to delete the name and identity of the witness, shall be made available to the pupil.

1. The complaining witness in any sexual assault or battery case must be provided with a copy of the applicable disciplinary rules and advised of his/her right to (a) receive five days' notice of his/her scheduled testimony, (b) have up to two (2) adult support persons of his/her choosing present in the hearing at the time he/she testifies, which may include a parent, guardian, or legal counsel, and (c) elect to have the hearing closed while testifying.
2. The Charter School must also provide the victim a room separate from the hearing room for the complaining witness' use prior to and during breaks in testimony.
3. At the discretion of the entity conducting the expulsion hearing, the complaining witness shall be allowed periods of relief from examination and cross-examination during which he or she may leave the hearing room.
4. The entity conducting the expulsion hearing may also arrange the seating within the hearing room to facilitate a less intimidating environment for the complaining witness.

5. The entity conducting the expulsion hearing may also limit time for taking the testimony of the complaining witness to the hours he/she is normally in school, if there is no good cause to take the testimony during other hours.
6. Prior to a complaining witness testifying, the support persons must be admonished that the hearing is confidential. Nothing in the law precludes the entity presiding over the hearing from removing a support person whom the presiding person finds is disrupting the hearing. The entity conducting the hearing may permit any one of the support persons for the complaining witness to accompany him or her to the witness stand.
7. If one or both of the support persons is also a witness, the Charter School must present evidence that the witness' presence is both desired by the witness and will be helpful to the Charter School. The person presiding over the hearing shall permit the witness to stay unless it is established that there is a substantial risk that the testimony of the complaining witness would be influenced by the support person, in which case the presiding official shall admonish the support person or persons not to prompt, sway, or influence the witness in any way. Nothing shall preclude the presiding officer from exercising his or her discretion to remove a person from the hearing whom he or she believes is prompting, swaying, or influencing the witness.
8. The testimony of the support person shall be presented before the testimony of the complaining witness and the complaining witness shall be excluded from the courtroom during that testimony.
9. Especially for charges involving sexual assault or battery, if the hearing is to be conducted in public at the request of the pupil being expelled, the complaining witness shall have the right to have his/her testimony heard in a closed session when testifying at a public meeting would threaten serious psychological harm to the complaining witness and there are no alternative procedures to avoid the threatened harm. The alternative procedures may include videotaped depositions or contemporaneous examination in another place communicated to the hearing room by means of closed-circuit television.
10. Evidence of specific instances of a complaining witness' prior sexual conduct is presumed inadmissible and shall not be heard absent a determination by the person conducting the hearing that extraordinary circumstances exist requiring the evidence be heard. Before such a determination regarding extraordinary circumstance can be made, the witness shall be provided notice and an opportunity to present opposition to the introduction of the evidence. In the hearing on the admissibility of the evidence, the complaining witness shall be entitled to be represented by a parent, legal counsel, or other support person. Reputation or opinion evidence regarding the sexual behavior of the complaining witness is not admissible for any purpose.

### **G. Expulsion Hearing**

The Charter School may contract with Fresno Unified School District (“FUSD”) to administer the expulsion hearing of a student. If the Charter School contracts with FUSD to administer the expulsion of a student, FUSD shall follow the procedures set forth herein and make a recommendation to the neutral and impartial Charter School Board, which shall make the final determination of whether to expel.

In the event an Administrative Panel hears the case, it will make a recommendation to the Board for a final decision whether to expel. The hearing shall be held in closed session (complying with all pupil confidentiality rules under FERPA) unless the pupil makes a written request for a public hearing in open session three (3) days prior to the date of the scheduled hearing.

### **H. Record of Hearing**

A record of the hearing shall be made and may be maintained by any means, including electronic recording, as long as a reasonably accurate and complete written transcription of the proceedings can be made.

### **I. Presentation of Evidence**

While technical rules of evidence do not apply to expulsion hearings, evidence may be admitted and used as proof only if it is the kind of evidence on which reasonable persons can rely in the conduct of serious affairs. A recommendation by the Administrative Panel to expel must be supported by substantial evidence that the student committed an expellable offense. Findings of fact shall be based solely on the evidence at the hearing. While hearsay evidence is admissible, no decision to expel shall be based solely on hearsay. Sworn declarations may be admitted as testimony from witnesses of whom the Board or Administrative Panel determines that disclosure of their identity or testimony at the hearing may subject them to an unreasonable risk of physical or psychological harm.

If, due to a written request by the expelled pupil, the hearing is held at a public meeting, and the charge is committing or attempting to commit a sexual assault or committing a sexual battery as defined in Education Code Section 48900, a complaining witness shall have the right to have his or her testimony heard in a session closed to the public.

The decision of the Administrative Panel shall be in the form of written findings of fact and a written recommendation to the Board, which will make a final determination regarding the expulsion. The final decision by the Board shall be made within ten (10) school days following the conclusion of the hearing. The decision of the Board is final.

If the Administrative Panel or Board decides not to recommend expulsion, the pupil shall immediately be returned to his/her educational program.

### **J. Written Notice to Expel**

The Executive Director or designee, following a decision of the Board to expel, shall send written notice of the decision to expel, including the Board's adopted findings of fact, to the student and/or parent/guardian. This notice shall also include the following: (a) Notice of the specific offense committed by the student; and (b) Notice of the student's or parent/guardian's obligation to inform any new district in which the student seeks to enroll of the student's status with the Charter School.

The Executive Director or designee shall send a copy of the written notice of the decision to expel to the authorizer. This notice shall include the following: (a) The student's name; and (b) The specific expellable offense committed by the student.

### **K. Disciplinary Records**

The Charter School shall maintain records of all student suspensions and expulsions at the Charter School. Such records shall be made available to the authorizer upon request.

### **L. No Right to Appeal**

The pupil shall have no right of appeal from expulsion from the Charter School as the Charter School Board's decision to expel shall be final.

### **M. Expelled Pupils/Alternative Education**

Parents/guardians of pupils who are expelled shall be responsible for seeking alternative education programs including, but not limited to, programs within the County or their school district of residence. The Charter School shall work cooperatively with parents/guardians as requested by parents/guardians or by the school district of residence to assist with locating alternative placements during expulsion.

### **N. Rehabilitation Plans**

Students who are expelled from the Charter School shall be given a rehabilitation plan upon expulsion as developed by the Board at the time of the expulsion order, which may include, but is not limited to, periodic review as well as assessment at the time of review for readmission. The rehabilitation plan should include a date not later than one year from the date of expulsion when the pupil may reapply to the Charter School for readmission.

### **O. Readmission**

The decision to readmit a pupil or to admit a previously expelled pupil from another school

district or charter school shall be in the sole discretion of the Board following a meeting with the Executive Director or designee and the pupil and parent/guardian or representative to determine whether the pupil has successfully completed the rehabilitation plan and to determine whether the pupil poses a threat to others or will be disruptive to the school environment. The Executive Director or designee shall make a recommendation to the Board following the meeting regarding his or her determination. The Board shall then make a final decision regarding readmission during the closed session of a public meeting, reporting out any action taken during closed session consistent with the requirements of the Brown Act. The pupil's readmission is also contingent upon the Charter School's capacity at the time the student seeks readmission.

**P. Special Procedures for the Consideration of Suspension and Expulsion of Students with Disabilities**

**1. Notification of SELPA**

The Charter School shall immediately notify the SELPA and coordinate the procedures in this policy with the SELPA of the discipline of any student with a disability or student who the Charter School or SELPA would be deemed to have knowledge that the student had a disability.

**2. Services During Suspension**

Students suspended for more than ten (10) school days in a school year shall continue to receive services so as to enable the student to continue to participate in the general education curriculum, although in another setting (which could constitute a change of placement and the student's IEP would reflect this change), and to progress toward meeting the goals set out in the child's IEP/504 Plan; and receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur. These services may be provided in an interim alternative educational setting.

**3. Procedural Safeguards/Manifestation Determination**

Within ten (10) school days of a recommendation for expulsion or any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the Charter School, the parent, and relevant members of the IEP/504 Team shall review all relevant information in the student's file, including the child's IEP/504 Plan, any teacher observations, and any relevant information provided by the parents to determine:

- a. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

- b. If the conduct in question was the direct result of the local educational agency's failure to implement the IEP/504 Plan.

If the Charter School, the parent, and relevant members of the IEP/504 Team determine that either of the above is applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.

If the Charter School, the parent, and relevant members of the IEP/504 Team make the determination that the conduct was a manifestation of the child's disability, the IEP/504 Team shall:

- a. Conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, provided that the Charter School had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement;
- b. If a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior; and
- c. Return the child to the placement from which the child was removed, unless the parent and the Charter School agree to a change of placement as part of the modification of the behavioral intervention plan.

If the Charter School, the parent, and relevant members of the IEP/504 Team determine that the behavior was not a manifestation of the student's disability and that the conduct in question was not a direct result of the failure to implement the IEP/504 Plan, then the Charter School may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to students without disabilities.

#### **4. Due Process Appeals**

The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination, or the Charter School believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request an expedited administrative hearing through the Special Education Unit of the Office of Administrative Hearings or by utilizing the dispute provisions of the 504 Policy and Procedures.

When an appeal relating to the placement of the student or the manifestation determination has been requested by either the parent or the Charter School, the student shall remain in the interim alternative educational setting pending the decision of the hearing officer in accordance with state and federal law, including 20 USC Section 1415(k), until the expiration of the forty-five (45) day time period provided for in an

interim alternative educational setting, unless the parent and the Charter School agree otherwise.

In accordance with 20 U.S.C. Section 1415(k)(3), if a parent/guardian disagrees with any decision regarding placement, or the manifestation determination, or if the Charter School believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, the parent/guardian or Charter School may request a hearing.

In such an appeal, a hearing officer may: (1) return a child with a disability to the placement from which the child was removed; or (2) order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

## **5. Special Circumstances**

Charter School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.

The Executive Director or designee may remove a student to an interim alternative educational setting for not more than forty-five (45) school days without regard to whether the behavior is determined to be a manifestation of the student's disability in cases where a student:

- a. Carries or possesses a weapon, as defined in 18 U.S.C. Section 930, to or at school, on school premises, or to or at a school function;
- b. Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function;  
or
- c. Has inflicted serious bodily injury, as defined by 20 U.S.C Section 1415(k)(7)(D), upon a person while at school, on school premises, or at a school function.

## **6. Interim Alternative Educational Setting**

The student's interim alternative educational setting shall be determined by the student's IEP/504 Team.

## **7. Procedures for Students Not Yet Eligible for Special Education Services**

A student who has not been identified as an individual with disabilities pursuant to IDEIA and who has violated the Charter School's disciplinary procedures may assert the procedural safeguards granted under this administrative regulation only if the Charter School had knowledge that the student was disabled before the behavior occurred.

The Charter School shall be deemed to have knowledge that the student had a disability if one of the following conditions exists:

- a. The parent/guardian has expressed concern in writing, or orally if the parent/guardian does not know how to write or has a disability that prevents a written statement, to Charter School supervisory or administrative personnel, or to one of the child's teachers, that the student is in need of special education or related services.
- b. The parent has requested an evaluation of the child.
- c. The child's teacher, or other Charter School personnel, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education or to other Charter School supervisory personnel.

If the Charter School knew or should have known the student had a disability under any of the three (3) circumstances described above, the student may assert any of the protections available to IDEIA-eligible children with disabilities, including the right to stay-put.

If the Charter School had no basis for knowledge of the student's disability, it shall proceed with the proposed discipline. The Charter School shall conduct an expedited evaluation if requested by the parents; however the student shall remain in the education placement determined by the Charter School pending the results of the evaluation.

The Charter School shall not be deemed to have knowledge that the student had a disability if the parent has not allowed an evaluation, refused services, or if the student has been evaluated and determined to not be eligible.

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