

PUPIL SUSPENSION AND EXPULSION POLICY

*Suspension and expulsion are mandatory subjects in each school's charter under CA charter law; thus, any suspension and expulsion policy drafted should be in alignment with your school's charter (or, alternatively, the charter should be amended in advance of adopting any policies that may conflict with its terms). Charter schools are presumably exempt from the many Education Code provisions governing suspension and expulsion of students, though some charter drafters (perhaps unwittingly) have committed to comply with them. These Education Code provisions enumerate the offenses that mandate discipline and dictate much of the suspension and expulsion process. Federal law describing the process that must be provided to students, mostly in the form of court decisions, governs student suspension and expulsion and provides students with so-called "due process" rights before they are suspended and expelled. Extensive laws governing discipline of special education students also presumably govern. It is important that at least one member of the school's staff be well-versed in these policies and know how to implement them in accordance with the law. The same should hold true for key board members. The implementation of the suspension and expulsion policy should not be delegated to staff without the required understanding of these process requirements.*

*Charter schools are also required to allow for other state and federal protections for students, such as first amendment rights, when crafting the substance of their suspension and expulsion policies and identifying the offenses that will result in suspension and expulsion.*

*Prior to enacting "zero tolerance" policies, schools should consult with legal counsel to determine the then current parameters for such a policy.*

*The draft policies below are drafted to address the most serious disciplinary problems after a school's less severe disciplinary practices (not shown here and presumably designed to be corrective and proactive in nature) have proven ineffective and where students present a substantial and ongoing disruption to the school's operations and/or a danger to other students and/or staff.*

**I. Introduction**

This Pupil Suspension and Expulsion Policy (the "Policy") for Walden Academy ("School") has been established in order to promote learning and protect the safety and well-being of all students. When the Policy is violated, it may be necessary to suspend or expel a student from regular classroom instruction. At the same time, the School intends to provide effective interventions for pupils who engage in acts of problematic behavior to help them change their behavior and avoid exclusion from the School.

Staff shall enforce disciplinary rules and procedures fairly and consistently amongst all students. The Policy will be printed and distributed as part of the Student Handbook and will clearly describe discipline expectations. The School Director 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 is available on request at the front office.

Discipline includes, but is not limited to, advising and counseling students, conferring with parents/guardians, detention during and after school hours, community service on or off campus, the

use of alternative educational environments, suspension and expulsion. 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 reasonable force necessary to protect the employee, students, staff or other persons or to prevent damage to school property.

A student identified as an individual with disabilities or for whom the School has a basis of knowledge of a suspected disability pursuant to the Individuals with Disabilities in Education Act ("IDEA") 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 regular education students except when federal and state law mandates additional or different procedures. The School will follow Section 504, the IDEA, the Americans with Disabilities Act of 1990 ("ADA") and all applicable federal and state laws when imposing any form of discipline on a student identified as an individual with disabilities or for whom the 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.

## **II. Suspension**

### **A. Definition**

Suspension is the temporary removal of a pupil from class instruction for adjustment or disciplinary reasons. Suspension does not mean any of the following:

- Reassignment to another education program or class at the School where the pupil will receive continuing instruction for the length of day prescribed by the Board for pupils of the same grade level;
- Referral to a certificated employee designated by the School Director to advise pupils;
- Removal from the class, but without reassignment to another class for the remainder of the class period without sending the pupil to the School Director or designee.

Suspended students shall be excluded from all School and School-related activities unless otherwise agreed during the period of suspension. Violation may result in further disciplinary action.

The School shall consider suspension from School only when other means of correction fail to bring about proper conduct or where the student's presence would constitute a danger to persons or property or seriously disrupt the educational process.

### **B. Authority**

*The Education Code permits a teacher in a traditional public school to suspend a student for any of the acts enumerated in section 48900 for the day of suspension and the following day. It also permits the teacher to send the pupil to the principal for consideration of suspension. Charter schools, though*

*presumably exempt from these laws, may provide the same or greater rights to teachers. Given that there are due process requirements that must be met even at the short-term suspension stage, it is recommended that teachers not be given the authority to suspend, unless the teachers are trained on appropriate suspension process requirements. Thus, the first part of the provided policy is optional depending upon whether the teacher is given authority to suspend. The following policy provides that the Principal may suspend a student for a period not to exceed 5 days, mirroring Education Code section 48911 (even though it is not binding on charter schools). Particular procedural requirements apply to short-term suspensions (those 10 days or less). Thus, suspensions should be for no more than 10 days because greater procedural protections apply to suspensions of greater than 10 days. In addition, certain special education rights attach for suspensions of 10 days (consecutive or cumulative) in the school year.*

A teacher may suspend a student only from his/her classroom for the day of the suspension plus the following school day. The Director or his/her designee may suspend a student from class, classes or the school for a period not to exceed five days. The Director or his/her designee may extend a student's suspension pending final decision by the Board of Directors of the School on a recommendation for expulsion. On a recommendation for expulsion, the Board of Directors may suspend a special education student being considered for expulsion in accordance with the laws relating to expulsion of special education students.

A pupil may not be suspended or expelled for any of the acts enumerated in this Policy unless the act is related to school activity or school attendance of Walden Academy. A pupil may be suspended or expelled for acts that are enumerated in this Policy and related to school activity or attendance that occur at any time, including, but not limited to any of the following:

- While on school grounds
- While going to or coming from school
- During the lunch period, whether on or off the school campus
- During, or while going to or coming from a school sponsored activity
- All acts related to school activity or school attendance occurring within the School

### **C. Grounds**

*Education Code sections 48900, et seq., identify the offenses for which a student may be suspended and expelled. These sections are not binding on charter schools. Thus, charter schools may identify offenses different than those identified in the Education Code as grounds for suspension and/or expulsion. The following list of offenses is modeled, with slight modification, after the offenses listed in the Education Code.*

*If your charter schools is an LEA receiving NCLB funds under the federal Elementary and Secondary Education Act of 1965, the LEA must follow California's law requiring a year-long expulsion of a student for bringing a firearm to school or possessing a firearm at school (there are limited exceptions to this requirement). There are additional reporting requirements tied to this funding relating to*

*expulsions.*

*When developing the grounds for suspension or expulsion, charter schools are limited by certain constitutional rights that students retain while at school. Generally, these include the freedoms guaranteed under the First Amendment (freedom of speech, assembly, etc.) and those under the Fourteenth Amendment (due process). Nonetheless, schools may create rules that reasonably promote an identified safety, discipline or educational goal. Thus, schools may limit expressions involving lewd, vulgar, obscene or plainly offensive speech and may regulate school sponsored activities such as publications, theatrical productions or other conduct related to the school's curriculum or basic educational mission. CSDC suggests that you consult with legal counsel to ensure appropriateness when drafting new grounds for suspension and expulsion.*

*Arguably, charter schools may impose suspension and expulsion for absences, tardies or truancies. The legislature, however, has expressed its intent that alternatives to suspension or expulsion be imposed against pupils who are truant, tardy or otherwise absent from school. While not binding on charter schools, it is a method followed by traditional public schools.*

The Director may use his/her discretion to provide alternatives to suspension or expulsion recommendations that are age appropriate and designed to address and correct the student's specific misbehavior. Alternatively, students may be suspended or recommended for expulsion for any of the following acts (whether completed, attempted or threatened) when it is determined the pupil:

- Caused physical injury to another person or willfully used force or violence upon the person of another, except in self-defense
- Possessed, sold or otherwise furnished any firearm, knife, 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 an authorized certificated school employee, with the Director's or designee's written concurrence
- Unlawfully possessed, used, sold or otherwise furnished, or was under the influence of, any controlled substance as defined in Health and Safety Code sections 11053-11058 (including, but not limited to, opiates, hallucinogenic substances, stimulants, depressants and narcotic drugs), alcoholic beverage or intoxicant of any kind.
- 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 the same as a controlled substance, alcoholic beverage or intoxicant
- Committed or attempted to commit robbery or extortion
- Caused or attempted to cause damage to school property or private property
- Stole or attempted to steal school property or private property (as used in this policy, "school property" includes but is not limited to electronic files and databases)

- Possessed or used tobacco or any products containing tobacco or nicotine products, including but not limited to cigars, cigarettes, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets and betel
- Committed an obscene act or engaged in habitual profanity or vulgarity
- Unlawfully possessed or offered, arranged, or negotiated to sell any drug paraphernalia, as defined in Health and Safety Code section 11014.5
- Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, other school officials or other school personnel engaged in the performance of their duties
- Knowingly received stolen school property or private property
- 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
- Committed 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
- 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
- Unlawfully offered, arranged to sell, negotiated to sell or sold the prescription drug Soma
- Engaged in, or attempted to engage in, hazing. “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. “Hazing” does not include athletic events or school-sanctioned events.
- Engaged in an act of bullying. “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 pupil or group of pupils directed toward one or more pupils that has or can be reasonably predicated to have the effect of one or more the of the following:
  - Placing a reasonable pupil(s) in fear of harm to that pupil(s)’ person or property;
  - Causing a reasonable pupil to experience a substantially detrimental effect on his or her physical or mental health;
  - Causing a reasonable pupil to experience substantial interference with his or her academic performance;
  - Causing a reasonable pupil to experience substantial interference with his or her ability to participate in or benefit from the services, activities, or privileges provided by a school.

- An electronic act, for purposes of the immediately preceding paragraph, means the transmission, 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:
  - A message, text, sound or image.
  - A post on a social network Internet Web site including, but not limited to:
    - Posting to or creating a burn page. “Burn page” means an Internet Web site created for the purpose of having one or more of the effects listed above.
    - Creating a credible impersonation of another actual pupil for the purpose of having one or more of the effects listed 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.
    - Creating a false provide for the purpose of having one or more of the effects listed 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.
- 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.
- A “reasonable pupil” means a pupil, including, but not limited to, an exceptional needs pupil, 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 his or her exceptional needs.
- Made terrorist threats against school officials and/or school property
- Committed sexual harassment
- Caused or participated in an act of hate violence
- Carried, possessed, sold or otherwise furnished an electronic signaling device
- Committed hazing
- Committed vandalism/malicious mischief
- Violated academic ethics
- Falsified or misinterpreted notes or phone calls of parents or guardians
- Falsely activated fire alarm
- Habitually violated the dress code
- Intentionally harassed, threatened or intimidated 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 student rights by creating an intimidating or hostile educational environment

- Discriminated against, harassed, intimidated, and/or bullied any person or groups of persons based on the following actual or perceived characteristics: disability, gender, nationality, race or ethnicity, religion, sexual orientation, gender identity, gender expression, religion, or association with one or more of these actual or perceived characteristics. **[Note: This basis is required under the Safe Place to Learn Act.]**
- 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, pursuant to this policy, 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 may be recommended for expulsion.

The above list is not exhaustive and depending upon the offense, a pupil may be suspended or recommended for expulsion for misconduct not specified above.

#### **D. Procedures Required to Suspend**

##### **Step One**

*Students maintain their constitutional rights in school against unreasonable searches and seizures under the 4<sup>th</sup> Amendment to the U.S. Constitution and under article 1, section 13 of the California Constitution. In order to conduct a lawful search, a school official must have reasonable grounds for suspecting a search will turn up evidence that a student has violated or is violating the law or rules of the school. Furthermore, the search must not be excessively intrusive in light of the age and sex of the student and the nature of the infraction.*

The School Director shall investigate the incident and determine whether or not it merits suspension.

*Searches:* In order to investigate an incident, a student's attire,<sup>1</sup> personal property, vehicle or school property, including books, desks and school lockers, may be searched by a Principal or designee who has reasonable suspicion that a student has violated or is violating the law or the rules of the school. *Illegally possessed items shall be confiscated and turned over to the police.*

##### **Step Two**

*For suspensions of 10 days or less, notice and a rudimentary hearing is required by the Constitution and must take place before the decision to suspend. Specifically, unless a student's presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process, a student is entitled to be given oral or written notice of the charges against him/her and, if he/she denies them, an explanation of the evidence the authorities have and an opportunity to present his side*

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<sup>1</sup> This does not include removing clothing to permit visual inspection of the under clothing, breasts, buttocks or genitalia of the pupil.

*of the story before deciding to suspend. If a student's presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process, the notice and rudimentary hearing should follow as soon as practicable. The rudimentary hearing afforded must provide an informal give-and-take between student and disciplinarian, prior to the suspension, where the student is first told what he/she is accused of doing and what is the basis is of the accusation.*

Unless a student poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process, a suspension will be preceded by an informal conference between the School Director and the student in which the student shall be orally informed of the reason for the suspension, the evidence against him, and be given the opportunity to present informal proof of his/her side of the story. If the student poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process, the informal conference will be held within two school days, unless the pupil waives this right or is physically unable to attend for any reason, including, but not limited to, hospitalization or detention in a correctional facility.

At the time of the suspension, a School employee shall make a reasonable effort to contact the parent/guardian by telephone or in person to inform him/her of the suspension and the reasons therefor.

If a student is suspended without the informal conference, both the student and the parent/guardian will be notified of a student's right to return to school for the purpose of a conference.

### **Step Three**

The School determines the appropriate length of the suspension (up to 5 days). When suspensions do not include a recommendation for expulsion, they shall not exceed 5 consecutive school days per suspension.

### **Step Four**

*Courts have found that due process requires a notice to the parents by telephone, mail or other appropriate method, within a reasonable time after the suspension, advising of the fact of such suspension, its duration and reasons therefor, and further stating that if desired, a prompt meeting or hearing will be held at which the suspension may be discussed with school officials. Additionally, if requested, a meeting or hearing within a reasonable time at which the suspended student may also be present, where the student shall be afforded an opportunity to present informal proof of his side of the case.*

*To ensure consistency and appropriate process, it is recommended that the charter school create a "Notice of Suspension Form" that contains all required information and instructions for the school official in charge of sending it to the parents, and maintaining records at the school.*

The School Director fills out a Notice of Suspension Form, a copy of which will be sent to the student's parent/guardian and to the student. A copy of this form is also placed in the student's cumulative file at the School. The Notice of Suspension Form shall state the fact of suspension, its duration and the specific offense committed by the student. In addition, the notice may state the date



and time when the student may return to school. The notice shall also state that if desired by the parent/guardian, a prompt meeting or hearing will be held at which the suspension may be discussed and at which the student may be present and afforded an opportunity to present informal proof of his/her side of the case. Additionally, if the School officials wish to ask the parent/guardian to confer regarding matters pertinent to the suspension, the notice may request the parent/guardian to respond to such requests without delay.

### **Step Five**

*Education Code section 48902 requires traditional public schools to report certain offenses to law enforcement. For instance, if a student may have violated Penal Code section 245 (assault with a deadly weapon or by force likely to produce great bodily harm), the principal must notify law enforcement before suspension. Additionally, if a student may have violated Education Code sections 48900(c) or (d) (dealing with use, possession, etc., of alcohol, narcotics or controlled substances), the principal must notify law enforcement within one school day. While this section is arguably not binding on charter schools, it may be a policy the school wishes to adopt.*

*If the school receives NCLB funding, the school must include in its policy referral to the criminal justice or juvenile delinquency system of any student who brings a firearm or weapon to school.*

*If the school chooses a policy where certain student information is disclosed and the school receives federal funds, ensure that the limitations of Family Educational Rights and Privacy Act are followed.*

The School Director determines whether the offense warrants a police report. The School Director will report certain offenses to law enforcement authorities in accordance with Education Code section 48902.

When Director releases a minor pupil to a peace officer for the purpose of removing the minor from the school premises, the Director shall take immediate steps to notify the parent, guardian or responsible relative of the minor regarding the release of the minor to the officer and regarding the place to which the minor is reportedly being taken, unless the minor has been taken into custody as a victim of suspected child abuse. **[Note: While it is arguable that Education Code section 48906 does not apply to charter schools, it is a good practice to follow.]**

### **Step Six**

*This is an optional policy that is used to provide students with a clear understanding of future behavioral expectations. Many schools, after a student has been suspended, will require a behavior contract so that all parties involved – student, parent and school – have a written record of what is expected from the student and parent. If the behavior contract is broken by the student, a more severe form of discipline, such as expulsion, may be appropriate depending upon the circumstances.*

The School Director may require the student and his/her parent/guardian to sign a contract that states the conditions that the student is expected to meet while at the School. Copies of the signed contract are kept by the school and given to the parent/guardian.

## **Special Education Student Suspensions**

*There are extensive state and federal laws regulating the treatment of students with special needs. These laws apply to the suspension and expulsion procedures for these students. The following is a summary of some of the laws in effect as of June 2005 and reflects the proposed regulations promulgated by the Department of Education under the Individuals with Disabilities Education Act. Once the regulations are finalized, this policy may need revising.*

*Many of the actions required by the law and this section will be handled in coordination with the LEA providing special education services to charter school students. This policy relating to special education students assumes that the charter school is not the LEA providing special education services. However, the school will need to work with the LEA to ensure that it is not violating any procedural rights afforded to special education students. If the charter school provides its own special education services, it must follow the requirements mandated by state and federal law and modify its policy as appropriate.*

*If a special education student experiences a change of placement (removal from the school for more than 10 consecutive days or a series of removals that constitute a pattern), certain rights attach. For instance, the LEA must continue to provide educational services to that child during any expulsion or suspension in excess of those 10 days. Additionally, a special education student who is removed from school more than 10 days, which removal does not constitute a change of placement, is still entitled to receive educational services during any expulsion or suspension in excess of those 10 days, although those services may differ from services under a change of placement. An LEA is not required to provide educational services to a suspended student with a disability during a suspension of 10 days and less if services are not provided to general education students. Carefully review all other requirements identified in the federal law and regulations to ensure that special education students' rights are covered.*

*If a special education student experiences a change of placement, certain rights attach to the student. Within 10 school days of the decision of a change of placement, the LEA, the parent, and relevant members of the student's IEP team (as determined by the parent and LEA) must review all relevant information in the student's file, including the IEP, any teacher observations and any relevant information provided by the parents to determine if 1) the conduct in question was caused by, or had a direct and substantial relationship to, the disability, or 2) the conduct in question was the direct result of the LEA's failure to implement the IEP. If either of these items is determined in the positive, the conduct in question must be determined a manifestation of the child's disability. If the behavior is determined a manifestation of the disability, the IEP team must either: 1) conduct a functional behavioral assessment, unless it had done so before the behavior that resulted in the change of placement, and implement a behavioral intervention plan for the child; or 2) if the behavioral intervention plan already has been developed, the team must review it and modify it, as necessary, to address the behavior. The IEP team must also return the child to the placement from which he/she was removed, unless the parent and the LEA agree to a change of placement as a part of the modification of the behavioral intervention plan.*

*The school has the ability to suspend a special education student for additional removals in excess of 10 days, which do not constitute a change in placement, however, it is recommended that ANY removal of a special education student in excess of 10 days be considered a potential change of placement, thus*

*triggering a manifestation determination meeting. Therefore, for any removal of a special education student in excess of 10 days (cumulative or consecutive), a manifestation determination meeting should be held and the resulting evaluation by the IEP team if the behavior was a manifestation of the disability.*

*Failure to provide these required due process procedures may result in liability to the school and/or LEA.*

*If after the manifestation determination meeting it is determined that the behavior of the child was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to general education students may be applied to the child, except that the school must provide educational services.*

When suspensions involve special education students, a manifestation determination meeting shall be held no later than the 10<sup>th</sup> suspension day (whether consecutive or cumulative for the school year). The School Director shall notify the student's special education teacher when the student's cumulative days of suspension for that school year reaches eight. That special education teacher shall promptly notify the Program Specialist of the need for the manifestation determination meeting. The manifestation determination meeting shall include the LEA, the parent, and relevant members of the student's IEP Team (as determined by the parent and the LEA).

The student shall be treated as a general education student for disciplinary purposes, except to the extent that educational services must continue, if at the manifestation determination meeting the following are both determined in the negative, after reviewing all relevant information in the student's file, including the student's IEP, any teacher observations and any relevant information provided by the parents: 1) the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or 2) the conduct in question was the direct result of the LEA's failure to implement the IEP. If it is determined at the manifestation determination meeting that 1) or 2) is answered in the affirmative, the conduct is deemed a manifestation of the disability.

If the conduct is deemed a manifestation of the disability, the IEP Team must conduct a functional behavioral assessment, create a plan and implement it, or if the plan is preexisting, review it and modify it as necessary to address the behavior.

In the case of a manifestation of a disability, the student will be returned to the placement from which he/she was removed, unless the LEA and parent agree to a change of placement as part of the modification of the behavioral intervention plan. For special education students, a new manifestation determination meeting is required for all proposed suspensions exceeding ten cumulative days in one school year.

The special education student may be removed from school to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability if the student: 1) carries a weapon to or possesses a weapon at school, on school premises or to or at a school function under the jurisdiction of the School; 2) 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 under the jurisdiction of the School; or 3) has

inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the School. [Note: The regulations identify the jurisdiction as being that of the LEA. This policy was modified to reflect the jurisdiction of the school. It may be determined, in conjunction with the LEA, to expand the jurisdiction back to the jurisdiction of the LEA.]

[Note: The LEA is required to notify parents of a disciplinary decision and to provide them with the procedural safeguards notice described in the regulations. This policy does not include a mention of this particular notice because it is assumed that the school is not the LEA. The school, however, does have to provide notice to parents in accordance with the other provisions of this policy. If your school is the LEA, amend the policy accordingly.]

#### **E. Appeal Process**

*Charter schools are not obligated by law to provide an appeal process for suspensions. It is, however, good practice to build into the school system a layered approach to final decisions relating to discipline. This policy is designed to give the school administrator the first opportunity to correct any deficiency, then the governing board for the school.*

A student or the student's parent/guardian may appeal those disciplinary actions, other than expulsion, imposed upon a student for his/her School related offenses. Appeals must be made first in writing at the School level, and should be directed to the School Director within five days of the School sending the Notice of Suspension Form to the parent/guardian and the student. The School Director will attempt to resolve the appeal with a written response within ten school days of receiving the written appeal. After appeal at the School level, if further appeal is desired, the student or his/her parent/guardian should appeal in writing to the School Board within five days of the date of the School level written response and should direct it to the Board Chair for final resolution within 15 school days. If any appeal is denied, the student, his/her parent/guardian may place a written rebuttal to the action in the student's file.

### **III. Expulsion**

#### **A. Definition**

*The definition of expulsion may have some practical difficulties relating to special education students that are expelled. Under federal law, special education students are entitled to continuing education services during suspension or expulsion after they have been suspended for 10 days within any school year. Whether the school functions as its own LEA or as an arm of the granting agency, it will need to ensure that the student continues to receive continuing educational services. If the charter school is its own LEA and is responsible to provide its own special education services, it would be required to provide services to students even if the student is expelled and thus disenrolled from the school. The same problem occurs if the Memorandum of Understanding with the chartering authority relating to special education services places the onus on the charter school to provide continuing education services during suspension or expulsion.*

*The expulsion processes identified below (steps one through nine), in conjunction with the due process required for suspensions, demonstrate that students have many rights that must be followed by the charter school before expelling the student. Thus, it is recommended that the school fill out a “Due Process Checklist” to be provided to the expulsion hearing panel providing evidence that the student was afforded the due process required by law.*

Expulsion means involuntary disenrollment from the charter school.

## **B. Authority**

*Generally, the governing body of the charter school (or a formal committee thereof) makes the final determination regarding student expulsion. Whoever makes the final decision, the student is entitled to a due process hearing conducted by an impartial panel. This panel may be the governing body or may be a separate administrative panel who then recommends expulsion to the governing body to make a final decision.*

*Traditional public schools must adhere to the Education Code, which allows the governing board to preside over the expulsion hearing, allows the school district to contract with the county hearing officer or with the Office of Administrative Hearings of the State of California. Alternatively, the school district may appoint a panel of three or more certificated persons, none of whom is a member of the Board or employed on the staff of the school in which the pupil is enrolled. While not binding, these are options that may be adopted by charter schools.*

*In any event, the key is that the hearing be fair and impartial. This means that panel members cannot have a state of mind that would preclude a fair hearing. Courts have determined that the probability of actual bias is too great to allow a panel member to remain in the following situations: 1) panel member has a direct pecuniary interest; 2) panel member has been a target of personal abuse from the person before him/her; 3) panel member is enmeshed in other matters involving the person whose rights he/she is determining; 4) panel member may have prejudiced the case because of a prior participation as an accuser, investigator, fact finder or initial decision maker.*

A student may be expelled either by the Board following a hearing before it or by the Board upon a recommendation of an Administrative Panel to be assigned by the Board as needed. The Panel may recommend expulsion of any student found to have committed an expellable offense.

The Board, upon voting to expel a pupil, may suspend the enforcement of the expulsion order for a period of not more than one calendar year and may, as a condition of the suspension of enforcement, assign the pupil to a school, class or program that is deemed appropriate for the rehabilitation of the pupil [or other conditions such as good behavior, attendance, etc.]. The rehabilitation program to which the pupil is assigned may provide for the involvement of the pupil’s parent or guardian in his or her child’s education in ways that are specified in the rehabilitation program. A parent or guardian’s refusal to participate in the rehabilitation program shall not be considered in the Board’s determination as to whether the pupil has satisfactorily completed the rehabilitation program.

### **C. Grounds for Expulsion**

*Refer to the text box under “Grounds for Suspension” for a related discussion.*

*The Education Code contains several grounds upon which, when a student has been found to have committed certain acts, he/she must be suspended and recommended for expulsion, or recommended for expulsion unless particular circumstances render it inappropriate. These provisions take the discretion away from the school leaders whether to recommend expulsions. Charter schools may adopt these so-called mandatory expulsion provisions or create their own or reject them all together. This policy is drafted so as to adopt the mandatory expulsion provisions of the Education Code and as such, are broken into the categories of expulsions reflected in the Education Code. Revise this policy accordingly if your school chooses not to use these mandatory expulsion provisions.*

*Mandatory expulsions do not excuse the school from affording a student his/her due process rights, nor does it change a special education student of his/her rights to continuing education services upon expulsion.*

#### **Category I Expulsions – Mandatory Recommendation for Expulsion**

The School Director shall immediately suspend a student, and recommend for expulsion, a student who has committed one or more of the following acts:

- Possessing, selling or otherwise furnishing a firearm when a school employee verifies firearm possession, unless the student obtained prior written permission to possess the firearm from a certificated school employee, which is concurred in by the director or his/her designee
- Brandishing a knife at another person
- Unlawfully selling a controlled substance
- Committing or attempting to commit a sexual assault or committing a sexual battery
- Possession of an explosive

#### **Category II Expulsions – Recommendation for Expulsion Required, Unless Inappropriate Under the Circumstances**

A student who has committed one of the following acts of misconduct must be recommended for expulsion, unless the School Director determines that expulsion should not be recommended under the circumstances or that an alternative means of correction would address the conduct.

- Causing physical injury to another person, except in self-defense
- Possession of any knife, explosive or other dangerous object of no reasonable use to the student
- Unlawful possession of any controlled substance, except for the first offense for the possession of not more than one ounce of marijuana, other than concentrated cannabis or for possession of over-the-counter medication for use by the pupil for medical purposes or medication prescribed for the pupil by a physician

- Robbery or extortion
- Assault or battery on a school employee

### **Category III Expulsions – Discretionary Expulsion Recommendation**

In the discretion of the School Director or his/her designee, any act that warrants suspension may warrant expulsion. Additionally, a student may be expelled for misconduct that is not listed above if the acts disrupt and/or present ongoing health and/or safety concerns, or the student has repeatedly engaged in the misconduct.

#### **D. Procedures to Expel a Student**

##### **Step One**

The School Director investigates the incident and determines whether the offense results in a suspension. If so, the School Director follows the procedures to suspend the student as outlined above.

##### **Step Two**

*Often it is desirable to extend a student's suspension pending the expulsion determination. If this course of action is chosen, the school should provide the student with another rudimentary due process hearing (similar to the informal meeting with the student before suspension, although it is best practice to ensure the parents/guardians attend this meeting).*

*Education Code section 48911(g) provides that an extension of suspension pending expulsion may be granted only if it is determined that the student's presence at the school would cause a danger to persons or property or a threat of disrupting the instructional process. While this section is not binding on charter schools, it may be a standard that a school wishes to adopt. This policy is drafted to adopt this standard.*

*Education Code section 48903 provides that the maximum number of days a student may be suspended in one school year may not exceed 20. This section is not binding on charter schools and does not appear to be mandated by case law.*

In the discretion of the School Director, a student's suspension may be extended pending expulsion. In this case, a meeting is held within five school days of the student's suspension to extend the suspension. The student and his/her parent/guardian are invited to attend this meeting with the School Director or his/her designee. The Board Chair may also be present.

At this meeting, the offense and the repercussions are discussed. An extension of the suspension may be granted only if the School Director or his/her designee has determined, after the meeting, that the presence of the student at the School would cause a danger to persons or property or a threat of disrupting the instructional process. If the student has committed an offense that requires a mandatory expulsion recommendation, this is discussed so that it is understood by all parties. The purpose of the meeting is to decide upon the extension of the suspension order and may be held in conjunction with the initial meeting with the parents after the suspension.

### **Step Three**

*Due process requires that the student be given notice of the nature of the expulsion hearing and the basic rights afforded to the student at the hearing. Therefore, the notice given to the student must include a statement of the specific charge, the right to be represented by counsel, to present evidence, and to confront and cross-examine adverse witnesses.*

*Students are entitled to a timely hearing. This right implicates the need for gathering facts, confronting witnesses while memories are fresh, and providing the student an opportunity to explain his conduct. Education Code section 48918 provides that an expulsion hearing shall be held within 30 school days of the date expulsion is recommended. Courts have determined that this timeframe is the legislature's attempt to define the period of delay during which it is reasonable to summarily deprive the student of his fundamental right to public education, thus appears to be binding on charter schools. Thus, charter schools should not deviate from the 30 day rule.*

The School shall send a letter to the student and parent/guardian regarding the expulsion hearing. The expulsion hearing shall be held no later than 30 school days of the date that expulsion is recommended, unless a brief extension is requested by the student or his/her parent/guardian.

The letter shall be sent via certified mail to the student and his/her parent/guardian to the address reflected in the pupil's student file at least 10 calendar days before the date of the hearing. The letter shall notify the student and parent/guardian when and where the expulsion hearing will take place and the rights of the student with respect to the hearing, including:

- The date and place of the expulsion hearing;
- A statement of the facts, charges and offenses upon which the proposed expulsion is based;
- A copy of the School's disciplinary rules relating to the alleged violation; **[NOTE: This provision is arguably not required by federal due process, but is a good idea.]**
- Notification of the student's or parent/guardian's obligation to provide information about the student's status at the School to any other school district or school to which the student seeks enrollment; **[NOTE: The Education Code provides disclosure requirements for students expelled.]**
- The opportunity for the student or the student's parent/guardian to appear in person and/or to employ and be represented by counsel or an advocate; **[NOTE: Students have a right to be represented by counsel.]**
- The right to inspect and obtain copies of all documents to be used at the hearing; **[NOTE: This provision is arguably not required by federal due process, but is a good idea.]**
- The opportunity to confront and question witnesses who testify at the hearing; **[NOTE: If the revelation of the name of a student witness or requiring that the student testify could subject the student to risk, statements and reports of such students may be relied on in lieu of live testimony and student's names do not have to be revealed.]**



- The opportunity to question all evidence presented and to present oral and documentary evidence on the student's behalf, including witness testimony.

#### **Step Four**

The School Director shall maintain documents that may be used at the hearing and make them available for review by the student and/or his/her parent/guardian. These papers may include, but are not limited to, the following: A record of the student's attendance and grades, a record of previous infractions, a statement of the facts surrounding the case made by the School Director; a statement of the facts surrounding the case made by a witness, a law enforcement agency's report and any other relevant matter.

#### **Step Five**

An expulsion hearing shall be held before an Administrative Panel consisting of at least three members who are certificated and neither a teacher of the pupil or a Board member of The Walden Academy Board of Directors. 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 a complete written transcription of the proceedings can be made.

While the 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 evidence produced at the hearing. While hearsay evidence is admissible, no decision to expel shall be based solely on hearsay evidence, although sworn declarations may be admitted as testimony from witnesses who are determined by the Administrative Panel that disclosure of their identity or live 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.

#### **Step Six**

*The school has the discretion to set the deadline for rendering the final decision. This policy, however, is drafted to reflect the time deadlines contained in the Education Code.*

The decision of the Administrative Panel shall be in the form of a written recommendation, with findings of fact, to the Walden Academy Board of Directors who will make a final determination regarding the expulsion. The final decision by the Board shall be made within 10 days following the conclusion of the hearing, or within 40 school days after the date of the pupil's removal from the

School for the incident for which the recommendation for expulsion is made. If the Board decides not to recommend expulsion, the pupil shall be reinstated and permitted to return to classroom programs. The decision not to recommend expulsion shall be final.

### **Step Seven**

*The right to appeal is not mandated, although it is a right provided to expelled students in traditional public schools. It is recommended that an appeal process be adopted by the charter school. In traditional public schools in California, students appeal to their County Boards of Education when they dispute an expulsion decision. Charter schools may pursue this route. If, however, the County Board of Education will not hear charter school expulsion appeals, the school should create an appeal process itself. It may choose to create an elaborate appeal system establishing a new panel of retired or current school administrators who are not related to the school who will hear the appeal, following the appeal procedures outlined in Education Code sections 48921-48924. Or, the school may adopt something less rigorous. The draft below models the traditional public system appeal process.*

*Education Code section 47605(d)(3) was added to require that charter schools notify the superintendent of the school district (presumably the charter granting district) the pupil's last known address within 30 days. If requested by the district, the charter school is required to provide the school district with a copy of the cumulative record of the pupil, including a transcript of grades or report card and health information.*

*The school is not required to inform the student or parent/guardian of his/her obligation to inform a new district in which the student wishes to enroll about his/her status. It is a recommended practice, however.*

The School Director, or designee, following a decision of the Board of Directors to expel a student, shall send written notice of the decision to expel, including the School Director's findings of fact, to the student or parent/guardian. The notice shall include the following:

- Notice of the specific offense committed by the student; school
- Notice of the right to appeal the expulsion to the Board of Directors. If that Board does not hear such appeals, the student may submit a written objection and request for reconsideration to the school's Board of Directors within 10 days. Decisions of the Board of Directors shall be final.
- 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 within the charter school

Within 30 days of the decision to expel, the School Director shall send written notice of the decision to expel to the student's district of residence, the County Office of Education and the charter granting district (if different than the student's district of residence). This notice shall include the student's name and the specific expellable offense committed by the student.

### **Step Eight**

*Special education students remain entitled to continued educational services. If the charter school is*

*its own LEA, the charter school is required to provide these services. Check your school's special education MOU to see who remains responsible for continuing educational services for suspended and expelled students. If the charter-granting agency is the LEA (as is the case with most charter schools) the charter school and LEA must work together to ensure that students continue to receive educational services upon expulsion.*

Expelled students are responsible for seeking alternative education programs, including but not limited to, programs within the County or their school district of residence.

### **Step Nine**

The school shall maintain records of all student suspensions and expulsions at the school site. Such records shall be made available for the Board of Directors review upon request.

Students who are expelled from the charter school shall be given a rehabilitation plan upon expulsion as developed by the Board of Directors, or its designee, at the time of the expulsion order, which may include, but is not limited to, a 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 school for 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 of Directors or its designee following a meeting with the School Director and the pupil and parent/guardian 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 School Director shall make a recommendation to the Board of Directors following the meeting regarding his/her determination. The pupil's readmission is also contingent upon the school's capacity and any other admission requirements in effect at the time the student seeks admission or readmission.

Adopted:

Amended: