

ABLE Board Policy No. 2-S (Revised)

Subject: Students

POLICY FOR SUSPENSION AND EXPULSION OF STUDENTS

This policy describes guidelines and procedures to address formal disciplinary action including suspension and expulsion of students at ABLE Charter Schools, Inc. (ABLE). Formal disciplinary action may be necessary when other interventions and corrective-action steps are unsuccessful or insufficient to address or prevent problematic behavior. The following areas are covered by this policy:

- Time and Place Relating to Suspension and Expulsion
- Authority of ABLE to Suspend and Expel Students
- General Process for Suspending and Expelling Students
- Special Procedures for Students with Disabilities
- Special Procedures Involving Acts of Sexual Assault/Battery

ABLE refers to this policy in its Student Handbook and posts it on the website at www.ablecharter.com so parents and guardians (collectively referred to as parents below) and all students are notified of disciplinary actions and procedures.

Corporal punishment is never used as a disciplinary measure at ABLE. Corporal punishment includes the willful infliction of, or willfully causing the infliction, of physical pain upon a student. However, corporal punishment does not include an employee's use of force that is reasonable and necessary to protect the employee, students, ABLE staff or other persons; or to prevent damage to school property.

Suspended or expelled students are excluded from all school and school-related activities at ABLE, unless otherwise agreed in writing during the period of suspension or expulsion.

Applicable federal and state laws are followed when ABLE imposes discipline on a student identified as an individual with a disability, or for whom ABLE has a basis of knowledge of a suspected disability, or who is otherwise qualified for services or protections accorded to these students, under the Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA") and Section 504 of the Rehabilitation Act of 1973 ("Section 504"). These students are subject to the same grounds for student discipline and accorded the same due process procedures applicable to all students, except when federal and state law mandates additional or different procedures.

I. Time and Place of Student Acts Leading to Suspension and Expulsion

A student may be suspended or expelled for prohibited misconduct if the act is related to school activity or school attendance occurring at any time including, but not limited to, the following: 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, and d) during, going to, or coming from a school-sponsored activity.

II. Authority of ABLE to Suspend and Expel Students

As a public charter school, ABLE is authorized by the California Education Code to suspend and expel students based on various grounds. ABLE follows the grounds set forth in Education Code Section and as referenced at the end of this policy.

A. Suspension

The Superintendent or designee may suspend a student, including suspension pending an expulsion hearing, upon a recommendation from the Principal or Principal's designee at the student's current school i.e., elementary school or secondary school.

B. Expulsion

The ABLE Board of Directors (ABLE Board) may expel a student after the School Discipline Review Board (SDRB): 1) holds a hearing on whether to recommend expulsion to the ABLE Board, 2) recommends expulsion of the student to the Superintendent, and 3) the Superintendent concurs with the SDRB recommendation and presents the matter to the ABLE Board for consideration. The SDRB consists of three members appointed by the Superintendent including the Deputy Superintendent or designee, one Principal or designee (except a Principal or designee at the elementary or secondary school of the student), and the Chief Compliance Officer. The SDRB may recommend expelling any student found to have committed an expellable offense.

For purposes of this policy, the SDRB also means an entity and/or individuals under contract with ABLE to conduct a hearing as described in Section VII below.

III. General Procedures for Suspending and Expelling Students

A. Suspension

ABLE may suspend a student according to the following process:

1. Conference

Prior to suspending a student, the student's Principal or the Principal's designee (collectively referred to as Principal) holds a conference. The conference may be either in person or by electronic or telephonic means. The conference is held with the student, the student's parent or guardian (referred to as parent below), and the teacher or other ABLE employee who referred the student for suspension.

The Principal may bypass this conference prior to the suspension, if the Principal determines that an emergency situation exists. An "emergency situation" involves a clear and present danger to the lives, safety or health of students or ABLE personnel. If a student is suspended without this conference, the parent and student are notified of the student's right to return to school for the purpose of a conference.

At the conference, the Principal informs the student about the reason for the disciplinary action and the evidence against the student and gives the student an opportunity to present the student's version and evidence in defense. This conference is held within two (2) school days from the date of the act, unless the student waives this right or is physically unable to attend for any substantiated reason including, but not limited to, incarceration or hospitalization. No penalties may be imposed on a student or the parent for failing to attend a conference with ABLE staff. Reinstatement of the suspended student is not contingent upon attendance by the student's parent at the conference.

2. Notice to Parents/Guardians

At the time of the suspension, ABLE's administrator or designee makes a reasonable effort to contact the parent by telephone or in person. Whenever a student is suspended, ABLE notifies the parent in

writing of the suspension and the date of return following suspension. This notice states the specific offense committed by the student. In addition, the notice may state the date and time when the student may return to school. If ABLE wishes to ask the parent to confer regarding matters relating to the suspension, the notice may request the parent to respond to this request without delay.

3. Suspension Time Limits and Recommendation for Expulsion

A suspension, when not recommending expulsion, shall not exceed five (5) consecutive school days. Upon a recommendation of expulsion by the Principal and the Superintendent, ABLE invites the student and parent to a conference. At this conference, ABLE determines whether the suspension must be extended pending an expulsion hearing. ABLE may extend the suspension period but only after holding a conference with the student and/or the parent.

ABLE may decide to extend the suspension period pending an expulsion hearing when: 1) the student's presence will be disruptive to the education process, or 2) the student poses a threat or danger to others. Upon either determination, the student's suspension will be extended pending the results of an expulsion hearing.

B. Expulsion

1. Notice and Opportunity for Hearing

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 Principal and Superintendent determine that the pupil committed an expellable offense.

The SDRB hears the case in closed session and complies with student confidentiality laws 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.

Written notice of the hearing is served to the student and the student's parent at least ten (10) calendar days before the date of the hearing. Upon mailing the notice, it is deemed served upon the student and parent. The notice shall explain and include the following:

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

2. Hearing and Decision Process

a. 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.

b. 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 SDRB to expel must be supported by substantial evidence that the student committed an expellable offense. Findings of fact must be based solely on the evidence at the hearing. While hearsay evidence is admissible, no decision to expel shall be based solely on hearsay alone. Sworn declarations may be admitted as testimony if the SDRB believes that disclosure of their identity or testimony at the hearing may subject them to an unreasonable risk of physical or psychological harm.

If the hearing is held at a public meeting due to a written request from the student committing the alleged offense, and the offense involves committing or attempting to commit a sexual assault or committing a sexual battery as defined in Education Code Section 48900, then the complaining witness may request and provide testimony to be heard in a session closed to the public.

The preliminary decision of the SDRB shall be in the form of written findings of fact and a written recommendation to the Superintendent on whether to expel the student and, if appropriate, a rehabilitation plan for the student following expulsion. The written decision is not a public record for purposes of disclosure.

If the SDRB decides not to recommend expulsion to the Superintendent, the student is immediately returned to the student's educational program.

Upon receiving the preliminary written decision of the SDRM as reviewed and recommended by the Superintendent, the ABLE Board (in closed session) determines whether to expel the student. Prior to its final decision, the ABLE Board may send the matter back to the SDRB for additional findings of fact. The ABLE Board makes a final determination regarding the expulsion within ten (10) school days following the conclusion of the final hearing by the Administrative Panel. The decision of the ABLE Board to expel is final.

c. Written Notice to Expel

Following a final decision of the ABLE Board to expel, the Superintendent or designee sends a written notice of this final decision to expel, including the findings of fact supporting the decision, to the student and/or the student's parent. This notice includes the following: 1) the specific offense committed by the student, and 2) the student's and/or parent's obligation to inform any new district in which the student seeks to enroll of the student's status with ABLE, 3) an explanation of the parent's responsibility to seek alternative education programs, and 4) a description of the rehabilitation plan for the student.

The Superintendent or designee shall send a copy of the written notice of the expulsion decision to the ABLE charter authorizer, New Jerusalem Elementary School District. This notice includes the following: 1) the student's name, and 2) the specific expellable offense committed by the student.

3. After the Decision to Expel

a. No Right to Appeal

The student has no right of appeal from the expulsion as the ABLE Board decision is final.

b. Disciplinary Records

ABLE maintains records of all student suspensions and expulsions and these records are made available to the charter authorizer upon request.

c. Alternative Education

Parents of pupils who are expelled are responsible for seeking alternative education programs. Alternate education programs include, but are not limited to, programs within San Joaquin County or their school district of residence. Upon request, ABLE works cooperatively with parents and/or the school district of residence to assist with locating alternative placements during expulsion.

d. Rehabilitation Plans

Students who are expelled from ABLE are provided a rehabilitation plan including, but not limited to, periodic review of the student's progress and an assessment at the time ABLE reviews a request for readmission. This rehabilitation plan includes a date not later than one year from the date of expulsion when the pupil may reapply to ABLE for readmission. Any request for readmission should be in the form of a letter addressed to the Superintendent.

e. Readmission

Upon receiving a request for readmission, the Superintendent or designee will meet with the student and parent to determine whether the student successfully completed a rehabilitation plan and to determine whether the student poses a threat to others or will be disruptive to the school environment. The Superintendent or designee shall make a recommendation to the ABLE Board following the meeting regarding a determination. The ABLE Board shall then make a final decision regarding readmission during closed session of board meeting, reporting out any action taken during closed session consistent with the requirements of the Brown Act. Any approval of readmission is also contingent upon the availability of space and capacity at the time the student seeks readmission. A decision by the ABLE Board to readmit or not readmit a student is final.

IV. Special Procedures When Considering Discipline of Students with Disabilities

1. Notification to the Charter Authorizer

Upon suspending or expelling a student with a disability or any student that ABLE reasonably knows has a disability, ABLE will immediately notify the New Jerusalem Elementary School District (District) and consult with the District regarding discipline of the student.

2. Services During Suspension

A student suspended for more than ten (10) school days in a school year continues to receive services so the student can continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP and/or 504 Plan; and

receives, 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 student with a disability because of a violation of a code based on student conduct, ABLÉ including the Director of Special Education, the parent, and relevant members of the IEP staff and/or the 504 Plan staff ("Team") review all relevant information in the student's file, including the student's IEP/504 Plan, any teacher observations, and any relevant information provided by the parents to determine either of the following:

- If the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or
- If the conduct in question was the direct result of ABLÉ's failure to implement the IEP/504 Plan.

If ABLÉ including the Director of Special Education, the parent, and relevant members of the Team determine that either of the above is applicable for the student, then the conduct must be found to be a manifestation of the child's disability.

If ABLÉ including the Director of Special Education, the parent, and relevant members of the Team determine that the conduct was a manifestation of the student's disability, the Team must:

- Conduct a functional behavioral assessment and implement a behavioral intervention plan for the student, provided that ABLÉ did not conduct this assessment prior to the Team's determination and before the behavior that resulted in a change in placement;
- For a student with an existing behavioral intervention plan, the Team reviews and modifies the current plan, as necessary, to address the behavior; and
- Returns the child to the placement from which the child was removed, unless the parent and ABLÉ agree to a change of placement as part of modifying the behavioral intervention plan.

If ABLÉ including the Director of Special Education, the parent, and relevant members of the Team determine that the behavior was not a manifestation of the student's disability and that the conduct in question was not a result of ABLÉ's failure to implement the IEP/504 Plan, then ABLÉ 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.

If ABLÉ determines that maintaining the current placement of the student is substantially likely to result in injury to the student or to others, ABLÉ may place the student in an alternative educational setting for up to forty-five (45) days. The forty-five (45) day period begins from the date of ABLÉ's determination to place the student, subject to a subsequent hearing below.

4. Due Process Appeals

The parent of a student with a disability may request an expedited administrative hearing through the Special Education Unit of the Office of Administrative Hearings (OAH) or by utilizing the dispute

provisions of the 504 Policy and Procedures of ABLE when the parent: 1) disagrees with any decision regarding placement of the student, or 2) disagrees with the manifestation determination.

If ABLE places the student in an alternative educational setting due to risks of injury to the student or others, ABLE must request in writing an expedited administrative hearing from the Special Education Unit of the Office of Administrative Hearings. In this request, ABLE asks the OAH to decide: 1) whether the student must continue to remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the forty-five (45) day time-period provided for in an interim alternative educational setting, whichever occurs first, unless the parent and ABLE agree otherwise, and 2) whether the student must continue to remain in an alternative educational setting beyond the forty-five (45) day period.

5. Special Circumstances

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

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

- Carries or possesses a weapon, as defined in 18 USC 930, to or at school, on school premises, or to or at a school function; or
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- 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
- Has inflicted serious bodily injury, as defined by 20 USC 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 Team.

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

Any student who has not been identified as an individual with disabilities pursuant to the IDEIA and who is subject to discipline by ABLE may assert the procedural safeguards provided under this policy only if ABLE had knowledge that the student was disabled before the behavior occurred.

ABLE is deemed to have knowledge that the student had a disability if one of the following exists:

- The parent expressed concern in writing, or orally if the parent does not know how to write or has a disability that prevents a written statement, to ABLE administrative staff, or to one of the student's teachers, that the student is in need of special education or related services, or
- The parent requested an evaluation of the student, or

- The student's teacher or other ABLE staff expressed specific concerns, about a pattern of behavior demonstrated by the student, directly to the Director of Special Education or to any other ABLE administrative staff or any Principals.

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

ABLE will 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 for services.

V. Special Procedures for Expulsion Hearings Involving Sexual Assault/Battery Offenses

When a student has engaged in sexual assault and/or battery offenses, ABLE may in its discretion contract with an outside entity and/or individuals to provide a panel of three (3) persons for conducting the disciplinary hearing and providing a recommendation, in accordance with the procedures of this policy.

ABLE may, upon a finding of good cause, determine that the disclosure of either the identity of the complaining 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 written declarations that shall be examined only by the SDRB. Copies of these sworn declarations, edited to delete personal-identifying information including name, identity, residence and contact information of the witness, shall be made available to the student.

In any sexual assault or battery case, the following shall also apply:

1. The complaining witness in any sexual assault or battery case must be provided with a copy of this policy and advised of that witness's right to: (A) receive prior notice at least five (5) days prior to the witness's scheduled testimony, (B) have up to two (2) adult support persons of chosen by the witness to be present in the hearing at the time the witness testifies, which may include a parent, guardian, or legal counsel, and (C) elect to have the hearing closed while testifying.
2. The SDRB must also provide the complaining witness a room separate from the hearing room for the witness' use prior to and during breaks in testimony.
3. At the discretion of the SDRB conducting the hearing, the complaining witness shall be allowed periods of relief from examination and cross-examination during which the witness may leave the hearing room.
4. The SDRB conducting the hearing may also arrange the seating within the hearing room to facilitate a less intimidating environment for the complaining witness.

5. The SDRB may also limit time for taking the testimony of the complaining witness to the hours the witness 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 precludes the SDRB presiding over the hearing from removing a support person if the SDRB's hearing officer finds that person is disrupting the hearing. When conducting the hearing, the SDRB may permit one of the support persons for the complaining witness to accompany that witness to be with the witness in the hearing room.
7. If one or both of the support persons is also a witness, ABLE must present evidence that the witness's presence is both desired by the complaining witness and will be helpful to ABLE's case. The SDRB will permit the witness to stay unless it is established there is a substantial risk the testimony of the complaining witness would be influenced by the support person. In that case, the hearing officer will admonish the support person or persons not to prompt, sway, or influence the witness in any way. Nothing will preclude the hearing officer from removing a person from the hearing whom the hearing officer believes is prompting, swaying, or influencing the witness.
8. The testimony of the support person will be presented before the testimony of the complaining witness and the complaining witness will be excluded from the hearing room during that testimony.
9. If the hearing is conducted in public at the request of the student, the complaining witness has the right to have that witness's testimony heard in a closed session when testifying at a public hearing 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 electronic video means.
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 SDRB that extraordinary circumstances exist requiring the evidence to be heard. Before a determination regarding extraordinary circumstance can be made, the complaining witness will 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 is 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.

Please consult with ABLE's Chief Compliance Officer if there are questions regarding formal disciplinary action involving the grounds or procedures for suspending or expelling a student.

Approved: October 20, 2021

Reference: Grounds for Discipline Set Forth In The Education Code Including, But Not Limited To, Education Code Sections 48900, 48900.2, 48900.3, 48900.4, 48900.7, and 48915.