Nord Country School

BP 5060 – Suspension and Expulsion Policy

1.0 Purpose

1.1 The Nord Country School Governing Board recognizes that, in order to promote learning and protect the safety and well-being of all students, staff, and visitors to the school, a code of conduct must be recognized and followed. Violations of this code of conduct may necessitate the suspension or expulsion of students from regular classroom instruction.

1.2 The purpose of this policy is to establish procedures for and the list of those offenses for which a pupil may/must be suspended or expelled.

1.3 Additionally, this policy attempts to provide due process to all students and ensure that staff shall enforce disciplinary rules and procedures consistently among all students. Discipline expectations shall be clearly described here and distributed as part of the Student/Parent Handbook, which is sent to each student at the beginning of the school year.

2.0 Responsibilities

2.1 It is the responsibility of all students and families to read and follow the code of conduct expectations set forth in the Student/Parent Handbook.

2.2 It is the responsibility of the Nord Country School staff to enforce the disciplinary rules and procedures set by the Administration fairly and consistently among all students.

2.3 It is the responsibility of the Administrator or designee to ensure that students and families are notified in writing upon enrollment and at the beginning of each school year of all discipline policies and procedures. The notice shall state that this Policy is available upon request from the Administrator's office.

3.0 Discipline

3.1 Discipline includes but is not limited to advising and counseling students, conferring with parents/guardians, detention during and after school hours, use of alternative educational environments, suspension and expulsion. Suspended or expelled students shall be excluded from all school and school-related activities unless otherwise agreed during the period of suspension or expulsion.

3.2 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.

3.3 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 ("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. Nord Country School will follow 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 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.

4.0 Grounds for Suspension and Expulsion of Students

4.1 A student may be suspended or expelled for prohibited misconduct if the act is related to school activity or school attendance occurring at the School or at any other school or a School sponsored event, 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.

5.0 Suspension Offenses

5.1 Discretionary Suspension Offenses - Students may be suspended for any of the following acts when it is determined the pupil:

5.1.1 Possessed, sold, or otherwise furnished a knife 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 Director or designee's concurrence.

5.1.2 Caused, attempted to cause, or threatened to cause physical injury to another person.

5.1.3 Willfully used force of violence upon the person of another, except self-defense.

5.1.4 Unlawfully possessed, used, sold or otherwise furnished, or was under the influence of any controlled substance, as defined in Health and Safety Code11053-11058, alcoholic beverage, or intoxicant of any kind.

5.1.5 Unlawfully offered, arranged, or negotiated to sell any controlled substance as defined in Health and Safety Code 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.

5.1.6 Committed or attempted to commit robbery or extortion.

5.1.7 Caused or attempted to cause damage to school property or private property.

5.1.8 Stole or attempted to steal school property or private property.

5.1.9 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.

5.1.10 Committed an obscene act or engaged in habitual profanity or vulgarity.

5.1.11 Unlawfully possessed or unlawfully offered, arranged, or negotiated to sell any drug paraphernalia, as defined in Health and Safety Code 11014.5.

5.1.12 Knowingly received stolen school property or private property.

5.1.13 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.

5.1.14 Committed or attempted to commit a sexual assault as defined in Penal code 261, 266c, 286, 288, 288a or 289, or committed a sexual battery as defined in Penal Code 243.4.

5.1.15 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.

5.1.16 Unlawfully offered, arranged to sell, negotiated to sell, or sold the prescription drug Soma.

5.1.17 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.

5.1.18 Made terroristic threats against school officials and/or school property. 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, or the personal property of the person threatened or his or her immediate family.

5.1.19 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.

5.1.20 Caused, attempted to cause, threaten 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.

5.1.21 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. This section shall apply to pupils in any of grades 4 to 12, inclusive.

1) Engaged in an act of bullying, including, but not limited to, bullying committed by means of an electronic act.

2) "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.
   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.

3) "Electronic Act" means the creation and 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, 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 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 (a) to (c), 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.

4) 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.

5.1.22 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).

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

5.2.1 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 students had obtained written permission to possess the item from a certificated school employee, with the Administrator's or designee's concurrence.

6.0 Suspension Procedure

6.1 Suspensions shall be initiated according to the following procedures:

6.1.1 Conference - Suspension shall be preceded, if possible, by a conference conducted by the Administrator or designee with the student and his or her parent and, whenever practical, the teacher, supervisor or school employee who referred the student to the Administrator. The conference may be omitted if the Administrator 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 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.

6.1.1.1 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.

6.1.1.2 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.

6.1.1.3 No penalties may be imposed on a pupil for failure of the pupil's parent or guardian to attend a conference with school officials. Reinstatement of the suspended pupil shall not be contingent upon attendance by the pupil's parent or guardian at the conference.

6.1.2 Notice to Parents/Guardians - At the time of suspension, the 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 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.

6.1.3 Parental Attendance - When suspending a student from class for committing an obscene act, engaging in habitual profanity or vulgarity, disrupting school activities, or otherwise willfully defying valid staff authority, the Administrator and/or the teacher of the class may require any parent/guardian who lives with the student to attend a portion of the school day in the class from which the student is being suspended, to assist in resolving the classroom behavior problems. Administrators and teachers should reserve the option of required parental attendance for cases in which they have determined that it is the best strategy to promote positive interaction between the student and the parent/guardian and to improve classroom behavior. The Administrator and teacher shall apply this policy uniformly to all students within each classroom.

6.2 Suspension Time Limits/Recommendation for Expulsion - Suspensions, when not including a recommendation for expulsion, shall not exceed five (5) consecutive school days per suspension.

6.2.1 Upon a recommendation of Expulsion by the Administrator or 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.

6.2.2 This determination will be made by the Administrator or designee upon either of the following determinations: 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.

7.0 Expellable Offenses

7.1 Discretionary Expellable Offenses - Students may be expelled for any of the following acts when it is determined the pupil:

7.1.1 Possessed, sold, or otherwise furnished any knife 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 Director or designee's concurrence.

7.1.2 Caused, attempted to cause, or threatened to cause physical injury to another person.

7.1.3 Willfully used force of violence upon the person of another.

7.1.4 Unlawfully possessed, used, sold or otherwise furnished, or was under the influence of any controlled substance, as defined in Health and Safety Code 11053-11058, alcoholic beverage, or intoxicant of any kind.

7.1.5 Unlawfully offered, arranged, or negotiated to sell any controlled substance as defined in Health and Safety Code 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.

7.1.6 Committed or attempted to commit robbery or extortion.

7.1.7 Caused or attempted to cause damage to school property or private property.

7.1.8 Stole or attempted to steal school property or private property.

7.1.9 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.

7.1.10 Committed an obscene act or engaged in habitual profanity or vulgarity.

7.1.11 Unlawfully possessed or unlawfully offered, arranged, or negotiated to sell any drug paraphernalia, as defined in Health and Safety Code 11014.5.

7.1.12 Knowingly received stolen school property or private property.

7.1.13 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.

7.1.14 Committed or attempted to commit a sexual assault as defined in Penal code 261, 266c, 286, 288, 288a or 289, or committed a sexual battery as defined in Penal Code 243.4.

7.1.15 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.

7.1.16 Unlawfully offered, arranged to sell, negotiated to sell, or sold the prescription drug Soma.

7.1.17 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.

7.1.18 Made terrorist threats against school officials and/or school property. 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, or the personal property of the person threatened or his or her immediate family.

7.1.19 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.

7.1.20 Caused, attempted to cause, threaten 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.

7.1.21 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. This section shall apply to pupils in any of grades 4 to 12, inclusive.

1) Engaged in an act of bullying, including, but not limited to, bullying committed by means of an electronic act.
2) “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.

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.

3) "Electronic Act" means the creation and 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, 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 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 (a) to (c), 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.

4) 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.

7.1.22 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).

7.2 Non -Discretionary Expellable Offenses - Students must be expelled for any of the following acts when it is determined pursuant to the procedures below that the pupil:

7.2.1 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 students had obtained written permission to possess the item from a certificated school employee, with the Administrator or designee's concurrence.

7.2.2 If it is determined by the Administrative Panel and/or Governing Board that a student has brought a firearm 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.

7.2.2.1 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.

7.2.2.2 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.

8.0 Authority to Expel

8.1 A student may be expelled either by the Board following a hearing before it or by the Board upon the recommendation of an Administrative Panel to be assigned by the Board as needed. The Administrative Panel should consist of at least three members who are certificated and neither a teacher of the pupil or a Board member of the School's governing board. The Administrative Panel may recommend expulsion of any student found to have committed an expellable offense.

9.0 Expulsion Procedures

9.1 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 Director or designee determines that the Pupil has committed an expellable offense.

9.2 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 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.

9.3 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. The notice shall include:

9.3.1 The date and place of the expulsion hearing;

9.3.2 A statement of the specific facts, charges and offenses upon which the proposed expulsion is based;

9.3.3 A copy of the School's disciplinary rules which relate to the alleged violation;

9.3.4 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;

9.3.5 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;

9.3.6 The right to inspect and obtain copies of all documents to be used at the hearing;

9.3.7 The opportunity to confront and question all witnesses who testify at the hearing;

9.3.8 The opportunity to question all evidence presented and to present oral and documentary evidence on the student's behalf including witnesses.

10.0 Special Procedures for Expulsion Hearings Involving Sexual Assault or Battery Offenses

10.1 The 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, which shall be examined only by the School, Panel Chair or the hearing officer in the expulsion. Copies of these sworn declarations, edited to delete the name and identity of the witness, shall be made available to the pupil.

10.1.1 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.

10.1.2 The 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.

10.1.3 At the discretion of the entity conducting the 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.

10.1.4 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.

10.1.5 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.

10.1.6 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 person conducting the hearing may permit any one of the support persons for the complaining witness to accompany him or her to the witness stand.

10.1.7 If one or both of the support persons is also a witness, the School must present evidence that the witness' presence is both desired by the witness and will be helpful to the School. The entity 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.

10.1.8 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.

10.1.9 Especially for charges involving sexual assault or battery, if the hearing is to be conducted in the 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.

10.1.10 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.

11.0 Students with Disabilities

A pupil 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 ("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 disciplinary action, including suspension and expulsion, and is accorded the same due process procedures applicable to regular education pupils except when federal and state law mandates additional or different procedures. The Charter School will follow the IDEA, Section 504, and all applicable federal and state laws when imposing any form of discipline on a pupil 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 pupils. The following procedures shall be followed when a student with a disability is considered for suspension or expulsion. These procedures will be updated if there is a change in the law.

11.1 Notification of SELPA - The Charter School shall immediately notify the SELPA and coordinate the procedures in this policy with the SELPA 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.

11.2 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; 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 alterative educational setting.

11.3 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 Team shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

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

11.3.2 If the conduct in question was the direct result of the local educational agency's failure to implement the IEP.

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

1. 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;
2. 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

3. 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 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 the failure to implement the IEP, 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.

11.4 Due Process Appeals

11.4.1 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.

11.4.2 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 U.S.C. Section 1415(k) 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 the Charter School agree otherwise.

11.5 Special Circumstances

11.5.1 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.

11.5.2 The 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:

11.5.2.1 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;

11.5.2.2 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; or

11.5.2.3 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.

11.6 Interim Alternative Educational Setting

11.6.1 The student's interim alternative educational setting shall be determined by the student's IEP team.

11.7 Procedures for Students Not Yet Eligible for Special Education Services

11.7.1 A student who has not been identified as an individual with disabilities pursuant to IDEIA and who has violated the district'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.

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

11.7.2.1 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.

11.7.2.2 The parent has requested an evaluation of the child.

11.7.2.3 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.

11.7.3 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 IDEA-eligible children with disabilities, including the right to stay-put.

11.7.4 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.

11.7.5 The Charter School shall not be deemed to have knowledge of 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.

12.0 Record of Hearing

12.1 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.

13.0 Presentation of Evidence

13.1 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.

13.2 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, Panel

or designee determines that disclosure of their identity or testimony at the hearing may subject them to an unreasonable risk of physical or psychological harm.

13.3 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.

13.4 The decision of the Administrative Panel shall be in the form of written findings of fact and a written recommendation to the Board who 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.

13.5 If the expulsion-hearing panel decides not to recommend expulsion, the pupil shall immediately be returned to his/her educational program.

14.0 Written Notice to Expel

14.1 The 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 or parent/guardian. This notice shall also include the following:

14.1.1 Notice of the specific offense committed by the student

14.1.2 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 School.

14.1.3 The Director or designee shall send a copy of the written notice of the decision to expel to the County. This notice shall include the following:

14.1.3.1 The student's name,

14.1.3.2 The specific expellable offense committed by the student

14.1.4 The Board’s decision to expel shall be final.

15.0 Disciplinary Records

15.1 The School shall maintain records of all student suspensions and expulsions at the School.

15.2 Such records shall be made available to the County upon request.

16.0 Expelled Pupils/Alternative Education

16.1 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.

17.0 Rehabilitation Plans

17.1 Students who are expelled from the 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 School for readmission.

18.0 Readmission

18.1 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 Administrator 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 Administrator 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 School's capacity at the time the student seeks readmission.

19.0 Adoption and Review

19.1 Originally Adopted: 8/09/2005

19.2 Most Recent Revision: 02/23/2022