

## Walden Academy Policy and Procedure Manual

### Chapter 5000, Students

#### Section 5500, Suspension and Expulsion

**Date:** Board Approved 1/14/14

**Responsible Department:** School Director

**Source Document:** STUDENT POLICY #6 –PUPIL SUSPENSION AND EXPULSION POLICY-Charter Schools Development Center, 2012

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.

### Suspension

#### 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

## Walden Academy Policy and Procedure Manual

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conduct or where the student's presence would constitute a danger to persons or property or seriously disrupt the educational process.

#### Authority

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

#### Grounds

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

## Walden Academy Policy and Procedure Manual

### Chapter 5000, Students

#### Section 5500, Suspension and Expulsion

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- 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:

## Walden Academy Policy and Procedure Manual

### Chapter 5000, Students

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- 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.
- 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

## **Walden Academy Policy and Procedure Manual**

### **Chapter 5000, Students**

#### **Section 5500, Suspension and Expulsion**

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expulsion for misconduct not specified above.

### **Procedures Required to Suspend**

#### **Step One**

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**

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 therefore.

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**

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

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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.

## **Walden Academy Policy and Procedure Manual**

### **Chapter 5000, Students**

#### **Section 5500, Suspension and Expulsion**

**Date:** Board Approved 1/14/14

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**Source Document:** STUDENT POLICY #6 –PUPIL SUSPENSION AND EXPULSION POLICY-Charter Schools Development Center, 2012

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**

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.

#### **Step Six**

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**

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

## **Walden Academy Policy and Procedure Manual**

### **Chapter 5000, Students**

#### **Section 5500, Suspension and Expulsion**

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**Source Document:** STUDENT POLICY #6 –PUPIL SUSPENSION AND EXPULSION POLICY-Charter Schools Development Center, 2012

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.

#### **Appeal Process**

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.

#### **Expulsion**

##### **Definition**

Expulsion means involuntary disenrollment from the charter school.

##### **Authority**

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.

## **Walden Academy Policy and Procedure Manual**

### **Chapter 5000, Students**

#### **Section 5500, Suspension and Expulsion**

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**Source Document:** STUDENT POLICY #6 –PUPIL SUSPENSION AND EXPULSION POLICY-Charter Schools Development Center, 2012

### **Grounds for 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.

### **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.



## **Walden Academy Policy and Procedure Manual**

### **Chapter 5000, Students**

#### **Section 5500, Suspension and Expulsion**

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**Source Document:** STUDENT POLICY #6 –PUPIL SUSPENSION AND EXPULSION POLICY-Charter Schools Development Center, 2012

#### **Step Two**

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**

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;
- 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;
- 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;
- The right to inspect and obtain copies of all documents to be used at the hearing;
- The opportunity to confront and question witnesses who testify at the hearing;
- 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.

## **Walden Academy Policy and Procedure Manual**

### **Chapter 5000, Students**

#### **Section 5500, Suspension and Expulsion**

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#### **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 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 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

## **Walden Academy Policy and Procedure Manual**

### **Chapter 5000, Students**

#### **Section 5500, Suspension and Expulsion**

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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**

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.