

Students

SUSPENSION AND EXPULSION / DUE PROCESS

The Governing Board desires to provide district students access to educational opportunities in an orderly school environment that protects their safety and security, ensures their welfare and well-being, and promotes their learning and development. The Board shall develop rules and regulations setting the standards of behavior expected of district students and the disciplinary processes and procedures for addressing violations of those standards, including suspension and/or expulsion.

The grounds for suspension and expulsion and the procedures for considering, recommending, and/or implementing suspension and expulsion shall be only those specified in law, in this policy, and in the accompanying administrative regulation.

Except when otherwise permitted by law, a student may be suspended or expelled only when the behavior is related to a school activity or school attendance occurring within any district school or another school district, regardless of when it occurs, including, but not limited to, the following: (Education Code 48900(s))

1. While on school grounds
2. While going to or coming from school
3. During the lunch period, whether on or off the school campus
4. During, going to, or coming from a school-sponsored activity

District staff shall enforce the rules concerning suspension and expulsion of students fairly, consistently, equally, and in accordance with the district's nondiscrimination policies.

Appropriate Use of Suspension Authority

Except when a student's act violates Education Code 48900(a)-(e), as listed in items #1-5 under "Grounds for Suspension and Expulsion: Grades K-12" of the accompanying administrative regulation, or when the student's presence causes a danger to others, suspension shall be used only when other means of correction have failed to bring about proper conduct. (Education Code 48900.5, 48900.6)

A student's parents/guardians shall be notified as soon as possible when there is an escalating pattern of misbehavior that could lead to on-campus or off-campus suspension.

No student may be suspended for disruption or willful defiance, except by a teacher pursuant to Education Code 48910. (Education Code 48900)

To ensure the proper supervision and ongoing learning of students who are suspended for any of the reasons enumerated in Education Code 48900 and 48900.2, but who pose no imminent danger or threat to anyone at school and for whom expulsion proceedings have not been initiated, the Superintendent

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or designee shall establish a supervised suspension classroom program which meets the requirements of law.

Except where a supervised suspension is permitted by law for a student's first offense, supervised suspension shall be imposed only when other means of correction have failed to bring about proper conduct. (Education Code 48900.5)

Suspensions from Class by Teachers (Education Code 48910)

A teacher may suspend a student, including a foster youth, from class for the day of the suspension and the day following for any of the acts set forth in Education Code 48900 (listed above). The teacher shall:

1. Immediately report the suspension to the principal or principal's designee; and
2. Immediately send the student to the principal or principal's designee; and
3. As soon as possible, ask the parent or guardian of the student to attend a parent-teacher conference regarding the suspension.
4. Whenever practicable, a school counselor or school psychologist shall attend the conference.
5. At the request of the teacher or parent/guardian, a school administrator shall attend the conference.

During the period of the suspension, the student shall not return to the class from which the student was suspended unless both the teacher and principal (or principal's designee) agree to the student's return. The student shall not be placed in another regular class or, if assigned to more than one class per day, to other regular classes scheduled at the same time during the period of suspension.

A teacher may also refer a student, including a foster youth, to the principal for consideration of a suspension from school.

The teacher of any class from which a student, including a foster youth, is removed may require the student to complete any assignments and tests missed during the removal. (Education Code 48913).

A teacher may request that the parent/guardian of a student, including a foster youth, whom the teacher has removed, attend a portion of a school day in their child's classroom. When a teacher makes this request, the principal shall send the parent/guardian a written notice that the parent/guardian's attendance is requested pursuant to law. The attendance of the parent/guardian shall be limited to the class from which the student was suspended. (Education Code 48900.1)

This notice shall also:

1. Inform the parent/guardian when their presence is expected and by what means they may arrange an alternate date

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2. Describe the legal protections afforded to the parent/guardian as an employee under Labor Code 230.7
3. Ask the parent/guardian to meet with the principal after the visit and before leaving school, as required by Education Code 48900.1

Suspensions From School By Superintendent, Principal, or Principal's Designee (Education Code 48911)

The principal, the principal's designee or the superintendent may suspend a student, including a foster youth, from school for no more than five (5) consecutive school days unless the suspension is extended pending an expulsion. (Education Code 48911)

A student, including a foster youth, may be suspended upon a first offense if the principal or superintendent determines that the student violated subdivisions (a), (b), (c), (d), or (e) of Section 48900 or that the student's presence causes a danger to persons or property or threatens to disrupt the instructional process (Education Code 48900.5). In all other cases, a student, including a foster youth, may be suspended only when other means of correction fail to bring about proper conduct.

Prior to suspension, the principal or the principal's designee shall conduct an informal conference between the student and, whenever practicable, the teacher, supervisor or other school employee referring the student for suspension.

At the conference, the student shall be informed of the reason for the disciplinary action and the evidence against them and shall be given the opportunity to present their version of the facts and evidence in his or her defense.

A student, including a foster youth, may be suspended prior to the conference only if the principal or the principal's designee determines that an "emergency situation" exists. An "emergency situation" is a situation determined by the principal, the principal's designee or the Superintendent to constitute a clear and present danger to the lives, safety or health of students or school personnel. If a student is suspended without a conference, the student, the student's parent/guardian, or if the student is a foster youth, the foster youth's educational rights holder, attorney, and county social worker, or if the student is a Native American child, the Native American child's tribal social worker and, if applicable, county social worker, shall be notified of the student's right to return to school for the purpose of a conference. The conference shall be held within two school days unless waived by the student or the student is physically unable to attend (e.g. incarceration, hospitalization). In such cases, the conference shall be held as soon as the student is physically able to return to school for the conference.

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At the time of suspension, a school employee shall make a reasonable effort to contact the pupil's parent or guardian in person, by email, or by telephone. If a pupil is suspended from school, the parent or guardian shall be notified in writing of the suspension. (EC Section 48911[b]-[f])

A school employee shall report the suspension of the pupil, including the cause for suspension, to the governing board of the school district or to the district superintendent of schools in accordance with the regulations of the governing board of the school district. (EC Section 48911[b]-[f])

Authority to Expel

A student, including foster youth, may be expelled only by the Board. (Education Code 48918(j))

As required by law, the Superintendent or principal shall recommend expulsion, and the Board shall expel any student found to have committed any of the following "mandatory recommendation and mandatory expulsion" acts at school or at a school activity off school grounds: (Education Code 48915)

1. Possessing a firearm which is not an imitation firearm, as verified by a certificated employee, unless the student had obtained prior written permission to possess the item from a certificated school employee, with the principal or designee's concurrence
2. Selling or otherwise furnishing a firearm
3. Brandishing a knife at another person
4. Unlawfully selling a controlled substance listed in Health and Safety Code 11053-11058
5. Committing or attempting to commit a sexual assault as defined in Penal Code 261, 266c, 286, 287, 288, or 289, or former 288a or committing a sexual battery as defined in Penal Code 243.4
6. Possessing an explosive as defined in 18 USC 921

For all other violations listed in the accompanying administrative regulation the Superintendent or principal shall have the discretion to recommend expulsion of a student. If expulsion is recommended, the Board shall order the student expelled only if it makes a finding of either or both of the following: (Education Code 48915(b) and (e))

1. That other means of correction are not feasible or have repeatedly failed to bring about proper conduct
2. That due to the nature of the violation, the presence of the student causes a continuing danger to the physical safety of the student or others

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A vote to expel a student shall be taken in an open session of a Board meeting. (Educational Code 48918(j))

The Board may vote to suspend the enforcement of the expulsion order pursuant to the requirements of law and the accompanying administrative regulation. (Education Code 48917)

No student shall be expelled for disruption or willful defiance. (Education Code 48900)

No child enrolled in a preschool program shall be expelled or unenrolled except under limited circumstances as specified in Administrative Regulation (AR) 5148.3 - Preschool/Early Childhood Education.

Due Process

The Board shall provide for the fair and equitable treatment of students facing suspension and/or expulsion by affording them their due process rights under the law.

The Superintendent or designee shall comply with procedures for notices, hearings, and appeals as specified in law and administrative regulation. (Education Codes 48911, 48915 and 48915.5, 48918)

These rules and regulations consist of the following procedures:

- a. The pupil shall be entitled to a hearing to determine whether the pupil should be expelled. An expulsion hearing shall be held within 30 school days after the date the principal or the superintendent of school determines that the pupil has committed any of the acts enumerated in EC Section 48900, unless the pupil requests, in writing, that the hearing be postponed. (EC Sections 48918[a][1]) The pupil is entitled to at least one postponement of an expulsion hearing, for a period of not more than 30 days.
- b. The governing board of the school district shall decide whether to expel the pupil within 10 schooldays after the conclusion of the hearing, unless the pupil requests in writing that the decision be postponed. If the hearing is held by a hearing officer or an administrative panel, or if the governing board of the school district does not meet on a weekly basis, the governing board of the school district shall decide whether to expel the pupil within 40 schooldays after the date of the pupil's removal from his or her school of attendance for the incident for which the recommendation for expulsion is made by the principal or the superintendent of schools, unless the pupil requests in writing that the decision be postponed. (EC Section 48918[a][2])
- c. Written notification of the hearing shall be forwarded to the pupil at least 10 calendar days before the date of the hearing. The notice shall include all of the requirements listed in EC Section 48918(b)(1)-(5). (EC Section 48918[b])

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- d. Notwithstanding EC Section 35145, the governing board of the school district shall conduct a hearing to consider the expulsion of a pupil in a session to the public, unless the pupil requests, in writing, at least five days before the date of the hearing, that the hearing be conducted at a public meeting. (EC 48918[g])
- e. A record of the hearing shall be made. The record may be maintained by any means, including electronic recording, so long as a reasonably accurate and complete written transcription of the proceedings can be made. (EC Section 48918[g])
- f. Whether an expulsion hearing is conducted by the governing board of the school district or before a hearing officer or administrative panel, final action to expel a pupil shall be taken only by the governing board of the school district in a public session. (EC Section 48918[j])

Maintenance and Monitoring of Outcome Data

The Superintendent or designee shall maintain outcome data related to student suspension and expulsion in accordance with Education Codes 48900.8 and 48916.1, including, but not limited to, the number of students recommended for expulsion, the grounds for each recommended expulsion, the actions taken by the Board, the types of referral made after each expulsion, and the disposition of the students after the expulsion period.

The governing board of the school district shall maintain a record of each expulsion, including the cause for the expulsion. Records of expulsions shall be nonprivileged, disclosable public records. (EC Section 48918[k])

For any expulsion that involves the possession of a firearm, such data shall include the name of the school and the type of firearm involved, as required pursuant to 20 USC 7961. Suspension and expulsion data shall be reported to the Board annually and to the California Department of Education when so required.

If the decision to recommend expulsion is a discretionary act and the pupil is a foster child, as defined in EC Section 48853.5, the governing board of the school district shall provide notice of the expulsion hearing to the pupil's attorney and an appropriate representative of the county child welfare agency as least 10 calendar days before the date of the hearing. (EC Section 48918.1[a])

If an individual with exceptional needs who is also a foster child, as defined in EC Section 48853.5 is suspended or expelled from school and the school district has proposed a change of placement due to an act for which a decision to recommend expulsion is at the discretion of the principal or the or the district superintendent of schools, the pupil's attorney and an appropriate representative of the county child welfare agency shall be invited to participate in the Individualized Education Program team meeting that makes a manifestation determination pursuant to section 1415(k) of Title 20 of the United States Code. (EC Section 48915.5[d])

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In presenting the report to the Board, the Superintendent or designee shall disaggregate data on suspensions and expulsions by school and by numerically significant student subgroups, including, but not limited to, ethnic subgroups, socioeconomically disadvantaged students, English learners, long-term English Learners, students with disabilities, foster youth, and homeless students. Based on the data, the Board shall address any identified disparities in the imposition of student discipline and shall determine whether and how the district is meeting its goals for improving school climate as specified in its local control and accountability plan.

Legal Reference:

<u>State</u>	<u>Description</u>
Civ. Code 47	Privileged communication
Civ. Code 48.8	Defamation liability
Code of Civil Procedure 1985-1997	Production of evidence; means of production
Ed. Code 17292.5	Program for expelled students; facilities
Ed. Code 1981-1983	Enrollment of students in community school
Ed. Code 212.5	Sexual harassment
Ed. Code 233	Hate violence
Ed. Code 32260-32262	Interagency School Safety Demonstration Act of 1985
Ed. Code 35145	Open board meetings
Ed. Code 35146	Closed sessions regarding suspensions
Ed. Code 35291	Rules for government and discipline of schools
Ed. Code 35291.5	Rules and procedures on school discipline
Ed. Code 48645.5	Former juvenile court schools students enrollment
Ed. Code 48660-48666	Community day schools
Ed. Code 48853-48853.5	Foster youth
Ed. Code 48900-48927	Suspension and expulsion
Ed. Code 48950	Speech and other communication
Ed. Code 48980	Parent/Guardian notifications
Ed. Code 49073-49079	Privacy of student records
Ed. Code 52052	Numerically significant student subgroups
Ed. Code 52060-52077	Local control and accountability plan
Ed. Code 64000-64001	Consolidated application
Ed. Code 8489-8489.1	Prohibition against expulsion of preschool student
Gov. Code 11455.20	Informal hearing procedures
Gov. Code 54950-54963	The Ralph M. Brown Act
H&S Code 11014.5	Drug paraphernalia
H&S Code 11053-11059	Controlled substances; standards and schedules
Lab. Code 230.7	Employee time off to appear in school on behalf of a child
Pen. Code 240	Assault defined
Pen. Code 241.2	Assault fines
Pen. Code 242	Battery defined
Pen. Code 243.2	Battery on school property

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Legal Reference:

<u>State</u>	<u>Description</u>
Pen. Code 243.4	Sexual battery
Pen. Code 245	Assault with deadly weapon
Pen. Code 245.6	Hazing
Pen. Code 266c	Rape defined
Pen. Code 286	Unlawful sexual intercourse
Pen. Code 287	Sodomy defined
Pen. Code 288	Oral Copulation
Pen. Code 289	Lewd or lascivious acts with child under age 14
Pen. Code 31	Penetration of genital or anal openings
Pen. Code 417.27	Principal of a crime; defined
Pen. Code 422.55	Laser pointers
Pen. Code 422.6	Definition of hate crime
Pen. Code 422.7	Crimes; harassment
Pen. Code 422.75	Aggravating factors for punishment
Pen. Code 626.10	Enhanced penalties for hate crimes
Pen. Code 626.2	Dirks, daggers, knives, razors, or stun guns
Pen. Code 626.9	Entry upon campus after written notice of suspension or dismissal without permission
Pen. Code 868.5	Gun-Free School Zone Act of 1995
W&I Code 224.1	Supporting person; attendance during testimony of witness Indian child; definition
W&I Code 729.6	Counseling
<u>Federal</u>	<u>Description</u>
18 USC 921	Definitions; firearms and ammunition
20 USC 1415(K)	Students with disabilities; placement in alternative educational setting
20 USC 7961	Gun-Free Schools Act
42 USC 11431-11435	Education of homeless children and youths
Attorney General Opinion	80 Ops.Cal.Atty.Gen. 348 (1997)
Attorney General Opinion	80 Ops.Cal.Atty.Gen. 85 (1997)
Attorney General Opinion	80 Ops.Cal.Atty.Gen. 91 (1997)
Attorney General Opinion	84 Ops.Cal.Atty.Gen. 146 (2001)
<u>Management Resources</u>	<u>Description</u>
Court Decision	Board of Education of Sacramento City Unified School District v. Sacramento County Board of Education and Kenneth H. (2001) 85 Cal.App.4th 1321
Court Decision	Fremont Union High School District v. Santa Clara County Board (1991) 235 Cal. App. 3d 1182
Court Decision	Garcia v. Los Angeles Board of Education (1981) 123 Cal. App. 3d 807

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<u>Management Resources</u>	<u>Description</u>
Court Decision	John A. v. San Bernardino School District (1982) 33 Cal. 3d 301
Court Decision	T.H. v. San Diego Unified School District (2004) 122 Cal. App. 4th 1267
Court Decision	Woodbury v. Dempsey (2003) 108 Cal. App. 4th 421
U.S. DOE, Office for Civil Rights Publication	Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline, January 2014
Website	CSBA District and County Office of Education Legal Services
Website	U.S. Department of Education, Office of Safe and Healthy Students
Website	California Attorney General's Office
Website	California Department of Education
Website	CSBA
Website	U.S. Department of Education, Office for Civil Rights

WESTMINSTER SCHOOL DISTRICT

Westminster, California

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