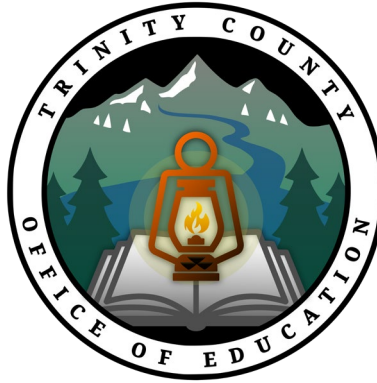




Trinity County Office of Education

Student Expulsion Guidelines

Sept. 2017, Updated April 28, 2022

These guidelines are to supplement, not supplant, local district policies and procedures pertaining to expulsion of students.

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Do I Expel a Student?

From the CSBA legal notes, BP 5144.1 Students

Note: While recognizing that suspension or expulsion of students is sometimes necessary, legislative, administrative, regulatory, civic, and educational leaders are united in the belief that instructional time should be used for student learning purposes and that ***school discipline should be imposed in a way that, as much as possible, would not exclude students from school or limit their ability or opportunity to learn.*** Pursuant to Education Code [48900.5](#), a district is not authorized to suspend a student for certain specified violations unless other means of correction have failed to bring about proper conduct. Such other means of correction include, but are not limited to, conferences between school personnel and the student and his/her parents/guardians; use of study, guidance, or other intervention teams to develop a plan to address the behavior in partnership with the student; and participation in a restorative justice program. Education Code [48900.5](#) also authorizes a district to document in a student's records the alternative means of correction used to address the student's behavior. For further information about specific disciplinary strategies, including alternatives to class or school removals, see BP/AR 5144 - Discipline.

Note: In addition, the U.S. Department of Justice's Civil Rights Division (DOJ) and the U.S. Department of Education's Office for Civil Rights (OCR), in their joint January 2014 Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline, ***state that studies have suggested a correlation between exclusionary discipline policies and practices (such as suspension and expulsion) and an array of serious educational, economic, and social problems, including school avoidance and diminished educational engagement, decreased academic achievement, increased behavior problems, and increased likelihood of dropping out, substance abuse, and involvement with the juvenile justice system.*** Consequently, they recommend that districts adopt alternative disciplinary measures that provide students with appropriate interventions and supports as a means for preventing and addressing student misbehaviors.

Note: ***The need to implement means of correction other than suspension and expulsion is underscored by Education Code [52060-52077](#), which require districts to adopt and annually update a local control and accountability plan (LCAP)*** including descriptions of the district's and each school's goals for improving student engagement and school climate, as measured by rates of student absenteeism, suspension and expulsion, and other relevant measures identified by the Board.

Annual Notice to Parents Regarding Student Suspension

At the beginning of each school year, the principal of each school shall ensure that all students and parents/guardians are notified in writing of all school rules related to discipline, including suspension and expulsion. (Education Code [35291](#), [48900.1](#), [48980](#))

Grounds for Suspension and Expulsion: Grades K-12

This section provides information on situations requiring a mandatory referral for expulsion, exception for students enrolled in charter schools, expulsion of students with exceptional needs, and readmission of an expelled student.

Acts for which a student, including a student with disabilities, may be suspended or expelled shall be only those specified as follows:

1. Caused, attempted to cause, or threatened to cause physical injury to another person; willfully used force or violence upon another person, except in self-defense; or committed as an aider or abettor, as adjudged by a juvenile court, a crime of physical violence in which the victim suffered great or serious bodily injury (Education Code [48900](#)(a) and (t))
2. 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 a certificated school employee, with the principal or designee's concurrence (Education Code [48900](#)(b))
3. Unlawfully possessed, used, sold, 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 (Education Code [48900](#)(c))
4. 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 such controlled substance, alcoholic beverage, or intoxicant (Education Code [48900](#)(d))
5. Committed or attempted to commit robbery or extortion (Education Code [48900](#)(e))
6. Caused or attempted to cause damage to school property or private property (Education Code [48900](#)(f))
7. Stole or attempted to steal school property or private property (Education Code [48900](#)(g))
8. 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, except that this restriction shall not prohibit a student from using or possessing his/her own prescription products (Education Code [48900](#)(h))

9. Committed an obscene act or engaged in habitual profanity or vulgarity (Education Code [48900\(i\)](#))
10. Unlawfully possessed, offered, arranged, or negotiated to sell any drug paraphernalia, as defined in Health and Safety Code [11014.5](#) (Education Code [48900\(j\)](#))
11. Knowingly received stolen school property or private property (Education Code [48900\(l\)](#))
12. Possessed an imitation firearm (Education Code [48900\(m\)](#))

Imitation firearm means 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. (Education Code [48900\(m\)](#))

13. 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](#) (Education Code [48900\(n\)](#))
 14. 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 (Education Code [48900\(o\)](#))
 15. Unlawfully offered, arranged to sell, negotiated to sell, or sold the prescription drug Soma (Education Code [48900\(p\)](#))
 16. Engaged in, or attempted to engage in, hazing (Education Code [48900\(q\)](#))
- Hazing means a method of initiation or pre-initiation into a student 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 student. Hazing does not include athletic events or school-sanctioned events. (Education Code [48900\(q\)](#))
17. Engaged in an act of bullying (Education Code [48900\(r\)](#))

Bullying means any severe or pervasive physical or verbal act or conduct, including communications made in writing or by means of an electronic act, directed toward one or more students that has or can reasonably be predicted to have the effect of placing a reasonable student in fear of harm to himself/herself or his/her property; cause the student to experience a substantially detrimental effect on his/her physical or mental health; or cause the student to experience substantial interferences with his/her academic performance or ability to participate in or benefit from the services, activities, or privileges provided by a school. (Education Code [48900\(r\)](#))

Bullying shall include any act of sexual harassment, hate violence, or harassment, threat, or intimidation, as defined in Education Code [48900.2](#), [48900.3](#), or 48900.4 and below in items #1-

3 of "Additional Grounds for Suspension and Expulsion: Grades 4-12," that has any of the effects described above on a reasonable student.

Electronic act means the creation or transmission of a communication originated on or off school site, including, but not limited to, a message, text, sound, image, or post on a social network Internet web site, by means of an electronic device, including, but not limited to, a telephone, wireless telephone, or other wireless communication device, computer, or pager. A post on a social network Internet web site shall include, but is not limited to, the posting or creation of a burn page or the creation of a credible impersonation or false profile for the purpose of causing a reasonable student any of the effects of bullying described above. (Education Code [48900\(r\)](#))

Reasonable student means a student, including, but not limited to, a student who has been identified as a student with a disability, who exercises average care, skill, and judgment in conduct for a person of his/her age, or for a person of his/her age with his/her disability. (Education Code [48900\(r\)](#))

18. Aided or abetted the infliction or attempted infliction of physical injury on another person, as defined in Penal Code [31](#)(Education Code [48900\(t\)](#))

19. Made terrorist threats against school officials and/or school property (Education Code [48900.7](#))

A terrorist threat includes any written or oral statement by a person who willfully threatens to commit a crime which will result in death or great bodily injury to another person or property damage in excess of \$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. (Education Code [48900.7](#))

Additional Grounds for Suspension and Expulsion: Grades 4-12

A student in grades 4-12 shall be subject to suspension or recommendation for expulsion when it is determined that he/she:

1. Committed sexual harassment as defined in Education Code [212.5](#) (Education Code [48900.2](#))

Sexual harassment means conduct which, when considered from the perspective of a reasonable person of the same gender as the victim, is sufficiently severe or pervasive as to have a negative impact upon the victim's academic performance or to create an intimidating, hostile, or offensive educational environment. (Education Code [212.5](#), [48900.2](#))

2. Caused, attempted to cause, threatened to cause, or participated in an act of hate violence as defined in Education Code [233](#)(Education Code [48900.3](#))

Hate violence means any act punishable under Penal Code [422.6](#), [422.7](#), or 422.75. Such acts include injuring or intimidating a victim, interfering with the exercise of a victim's civil rights, or damaging a victim's property because of the victim's race, ethnicity, religion, nationality,

disability, gender, gender identity, gender expression, or sexual orientation; a perception of the presence of any of those characteristics in the victim; or the victim's association with a person or group with one or more of those actual or perceived characteristics. (Education Code [233](#); Penal Code [422.55](#))

3. Intentionally engaged in harassment, threats, or intimidation against district personnel or students that is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting classwork, creating substantial disorder, and invading the rights of school personnel or students by creating an intimidating or hostile educational environment (Education Code [48900.4](#)) (CSBA AR 5144.1, Students)

Information About “Willful Defiance” and “School Disruption”

AB 420 Dickinson was signed into law by Governor Brown and became effective on January 1, 2015. The law amends [Section 48900 of the Ed Code](#) by removing willful defiance, in certain instances, as a reason that can be used to suspend or expel a student from school. Data regarding suspension and expulsions show willful defiance has been used in a disproportionate manner and has contributed to racial disparities.

The following is the Section of Education Code 48900 that is the subject of the change:

(k) (1) *Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school official or other school personnel engaged in the performance of their duties.*

The following is the change made to Education Code 48900 that changes the way willful defiance can be used:

(k) (2) *Except as provided in Section 48910, a pupil enrolled in kindergarten or any of grades 1 to 3, inclusive, shall not be suspended for any of the acts enumerated in this subdivision, and this subdivision shall not constitute grounds for a pupil enrolled in kindergarten or any grades 1 to 12, inclusive, to be recommended for expulsion.*

While Section k (1) regarding willful defiance was not removed from Education Code, Section k (2) made the following changes:

1. _ Eliminates the ability for a principal to suspend a student from school in grades K-3 for disruptive behavior or willful defiance.
2. _ Eliminates the ability for a principal to expel a student from school in any grade level for disruptive behavior or willful defiance. (www.talb.org/news/2015/4/15/know-the-education-code-student-discipline)

Extension of Suspension

A student may be suspended from school for not more than 20 school days in any school year. However, if a student enrolls in or is transferred to another regular school, an opportunity school, or continuation school or class for the purpose of adjustment, he/she may be suspended for not more than 30 school days in a school year.

These restrictions on the number of days of suspension shall not apply when the suspension is extended pending an expulsion. (Education Code [48911](#))

If the Board is considering the expulsion of a suspended student from any school or the suspension of a student for the balance of the semester from continuation school, the Superintendent or designee may, in writing, extend the suspension until such time as the Board has made a decision, provided the following requirements are followed: (Education Code [48911](#))

The extension of the original period of suspension is preceded by notice of such extension with an offer to hold a conference concerning the extension, giving the student an opportunity to be heard. This conference may be held in conjunction with a meeting requested by the student or parent/guardian to challenge the original suspension.

The Superintendent or designee determines, following a meeting in which the student and the student's parent/guardian were invited to participate, that the student's presence at the school or at an alternative school would endanger persons or property or threaten to disrupt the instructional process. (Education Code [48911](#))

If the student involved is a foster youth, the Superintendent or designee shall notify the district liaison for foster youth of the need to invite the student's attorney and a representative of the appropriate county child welfare agency to attend the meeting. (Education Code [48853.5](#), [48911](#), [48918.1](#))

If the student involved is a homeless child or youth, the Superintendent or designee shall notify the district liaison for homeless students. (Education Code [48918.1](#))

In lieu of or in addition to suspending a student, the Superintendent, principal, or designee may provide services or require the student to participate in an alternative disciplinary program designed to correct his/her behavior and keep him/her in school.

EXPULSION MATRIX

<u>Must</u> Recommend Expulsion (Mandatory)	<u>Shall</u> Recommend Expulsion Unless Particular Circumstances Render Inappropriate (Expulsion Expected)	<u>May</u> Recommend Expulsion (Discretionary)
Act <u>must</u> be committed at school or at a school activity. EC Section 48915(c) states that an administrator <u>must</u> recommend expulsion for the following violations: - Firearm - Possessing a firearm when a district employee verified firearm possession and when student did not have prior written permission from a certificated employee which is concurred with by the principal or designee. - Selling, or otherwise furnishing a firearm. - Brandishing a knife at another person. - Unlawfully selling a controlled substance listed in Health and Safety Code Section 11053 et. seq. - Committing or attempting to commit a sexual assault as defined in subdivision (n) of EC 48900 or committing sexual battery as defined in subdivision (n) of 48900. - Possession of an explosive.	Act <u>must</u> be committed at school or at a school activity. EC Section 48915 (a) states that an administrator <u>shall</u> recommend expulsion for the following violations unless the administrator finds that the expulsion is inappropriate due to a particular circumstance: - Causing serious physical injury to another person, except in self-defense. EC Section 48915 (a)(1)(A). - Possession of any knife, explosive, or other dangerous object of no reasonable use to the pupil. EC Section 48915 (a)(1)(B). - Unlawful possession of any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, except for the first offense for possession of not more than one avoirdupois ounce of marijuana other than concentrated cannabis. EC Section 48915(a)(1)(C). - Robbery or extortion. EC Section 48915 (a)(1)(D). - Assault or battery, as defined in Sections 240 and 242 of the Penal Code, upon any school employee. The recommendation for expulsion shall be based on one or both of the following: - Other means of correction are not feasible or have repeatedly failed to bring about proper conduct. - Due to the nature of the act, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.	Act <u>must</u> be committed at school or a school activity off school grounds, or on the way to and from school or a school activity off school grounds. EC Section 48900 states that an administrator <u>may</u> recommend expulsion for the following violations: - Inflicted physical injury - Possessed dangerous objects - Possessed drugs or alcohol - Sold look alike substance - Committed robbery/extortion - Caused damage to property - Committed theft - Possessed or used tobacco - Committed obscene act or habitual profanity/vulgarity - Possessed or sold drug paraphernalia - Disrupted or defied school staff* - Received stolen property - Possessed imitation firearm - Committed sexual harassment - Harassed, threatened or intimidated a student witness - Sold prescription drug Soma - Committed hazing - Engaged in bullying 48900.2 – Sexual harassment 48900.3 – Hate crimes 48900.4 – Hostile educational environment 48900.7 – Terroristic threats The recommendation for expulsion shall be based on one or both of the following: - Other means of correction are not feasible or have repeatedly failed to bring about proper conduct. - Due to the nature of the act, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.

LEGAL DEFINITIONS AND EXAMPLES

Note that this document is to be used as a “quick-reference” guide. The actual text of these laws is considerably more detailed than what is shown. Please refer to the source document and read thoroughly before determining charges.

Assault

“Assault” is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.

- *As opposed to battery, assault **does not require** contact with the other person.*
- *Words alone do not constitute an assault.*
- *Conduct must be intentional.*
- *Threatening to hit someone with an object is assault when accompanied by an action that shows intent to carry out the threat.*
- *In Ed. Code, only applies to staff members.*

✓ *Example: Mr. Smith is discussing Jesse’s behavior in class. Jesse gets mad and takes a swing at Mr. Smith, but does not connect.*

Battery

“Battery” is any willful and unlawful use of force or violence upon the person of another.

- *As opposed to assault, battery **requires** some type of violent, painful, or offensive physical contact.*
- *The person does not need to be injured for it to count as battery. For example, spitting on someone may be considered battery, depending on the circumstances.*
- *Conduct must be intentional.*
- *In Ed. Code, only applies to staff members.*

✓ *Example: Ms. Johnson is standing in the doorway to her classroom, blocking students from leaving. Gregorio pushes Ms. Johnson out of the way so he can leave.*

✓ *Example: A safety officer is breaking up a fight between two girls. One of the girls says “I don’t have to listen to you!” and spits on the safety officer.*

✓ *Example: Wendy throws a pencil across the classroom at a group of students surrounding the teacher at her desk. The teacher is struck in the head with the pencil. Though Wendy wasn’t aiming at the teacher and had no intention of hitting her, she knew her actions were likely to cause injury to someone in the group, so this is battery.*

Bullying (EC 48900(r))

“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 as defined in Section 48900.2, 48900.3, or 48900.4, directed toward one or more pupils that has or can be reasonably predicted to have the effect of one or more of the following:

- (A) Placing a reasonable pupil or pupils in fear of harm to that pupil's or those pupils' person or property.
- (B) Causing a reasonable pupil to experience a substantially detrimental effect on his or her physical or mental health.
- (C) Causing a reasonable pupil to experience substantial interference with his or her academic performance.
- (D) 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.

Controlled Substance

"Controlled Substance," unless otherwise specified, means a drug, substance, or immediate precursor which is listed in any schedule in Section 11054, 11055, 11056, 11057, or 11058 of the Health and Safety Code.

Dirk or Dagger

"Dirk" or "Dagger" means a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death.

Explosive (EC 48915(h))

"Explosive" means "Destructive Device" as described in Section 921 of Title 18 of the United States Code. The term "Destructive Device" means:

- Explosive, incendiary, or poison gas
- Bomb
- Grenade
- Rocket having a propellant charge of more than four ounces
- Missile having an explosive or incendiary charge of more than one-quarter ounce
- Mine
- Device similar to any of the devices described in the preceding clauses

Extortion

"Extortion" is the obtaining of property from another, with his consent, or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right.

- ✓ *Example: Juan tells Lisa if she doesn't give him her phone, he will beat up her brother.*
- ✓ *Example: Tina tells Temisha that if she doesn't give her the answers to the the test, she will tell everyone she is gay.*

Fear

"Fear" may be either:

1. The fear of an unlawful injury to the person or property of the person robbed, or of any relative of his or member of his family;
2. The fear of an immediate or unlawful injury to the person or property of anyone in the company of the person robbed at the time of the robbery.

Firearm

“Firearm” means a device, designed to be used as a weapon, from which is expelled through the barrel, a projectile by the force of an explosion or other form of combustion. It may also include a rocket, rocket propelled projectile launcher, or similar device carrying an explosive or incendiary material, whether or not the device is designed for emergency or distress signaling purposes.

Harassment

“Harassment” is unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner.

Hazing

“Hazing” means any method of initiation or pre-initiation into a student organization or student body, whether or not the organization or body is officially recognized by an educational institution, which is likely to cause serious bodily injury to any former, current, or prospective student of any school, community college, college, university, or other educational institution in this state.

- ✓ *Example: The new members of the band are told that they need to chug a bottle of vodka.*
- ✓ *Example: The new members of the football team are forced to run through “the gauntlet” where every other member of the team gets to hit them in the stomach.*

Hate Crime

“Hate Crime” means a criminal act committed, in whole or in part, because of one or more of the following actual or perceived characteristics of the victim:

- (1) Disability
- (2) Gender
- (3) Nationality
- (4) Race or ethnicity
- (5) Religion
- (6) Sexual orientation
- (7) Association with person or group with one or more of these actual or perceived characteristics

- ✓ *Example: A student paints “God Hates Faggots” on the wall of the bathroom.*
- ✓ *Example: A group of students attack an African American student for the sole reason that the student is black.*

Intimate Part

“Intimate Part” means the sexual organ, anus, groin, or buttocks of any person, and the breast of a female.

Obscenity/Obscene Act

"Obscenity" is any utterance or act that strongly offends the prevalent morality of the time. Currently, obscenity is evaluated by federal and state courts alike using a tripartite standard established by Miller v. California 413 U.S. 15 (1973). The Miller test for obscenity includes the following criteria:

- (1) Whether 'the average person, applying contemporary community standards' would find that the work, 'taken as a whole,' appeals to 'prurient interest'
- (2) Whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, and
- (3) Whether the work, 'taken as a whole,' lacks serious literary, artistic, political, or scientific value.

- ✓ *Example: Petra and Ryan are caught having sex in the elevator at school.*
- ✓ *Example: Simon is caught masturbating in the bathroom at school.*
- ✓ *Example: Teresa is caught drawing penises on the wall of the bathroom.*

Knife (EC 48915(g))

"Knife" means any dirk, dagger, or other weapon with a fixed, sharpened blade fitted primarily for stabbing, a weapon with a blade fitted primarily for stabbing, a weapon with a blade longer than 3¹/₂ inches, a folding knife with a blade that locks into place, or a razor with an unguarded blade.

Paraphernalia

"Paraphernalia" means all equipment, products and materials of any kind which are designed for use or marketed for use, in planning, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance.

Profanity

"Profanity" is material or language that denotes certain of those personally reviling epithets naturally tending to provoke violent resentment or denoting language so grossly offensive to members of the public who actually hear it as to amount to a nuisance.

Robbery

"Robbery" is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.

- ✓ *Example: Robert pushed down Mark and took his skateboard.*
- ✓ *Example: Jessica and Cindy cornered Alma in the restroom and threaten to beat her up if she doesn't give them her lunch money.*
- ✓ *Example: Craig grabbed Lewis' phone from his hands.*

Sexual Assault (EC 67385)

"Sexual Assault" includes, but is not limited to, rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, or threat of sexual assault.

Sexual Battery

“Sexual Battery” is the touching of an intimate part of another person, if the touching is against the will of the person touched, and is for the specific purpose of sexual arousal, sexual gratification, or sexual abuse.

Sexual Harassment

“Sexual harassment” means unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions:

- (a) Submission to the conduct is explicitly or implicitly made a term or a condition of an individual’s employment, academic status, or progress.
- (b) Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual.
- (c) The conduct has the purpose or effect of having a negative impact upon the individual’s work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment.
- (d) Submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution.

✓ *Examples of sexual harassment include:*

- *Making sexual propositions or pressuring students for sexual favors;*
- *Touching of a sexual nature;*
- *Writing graffiti of a sexual nature;*
- *Displaying or distributing sexually explicit drawings, pictures, or written materials;*
- *Performing sexual gestures or touching oneself sexually in front of others;*
- *Telling sexual or dirty jokes;*
- *Spreading sexual rumors or rating other students as to sexual activity or performance; or*
- *Circulating or showing e-mails or Web sites of a sexual nature.*

Terroristic Threat (EC 48900.7(b))

“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 district property, or the personal property of the person threatened or his or her immediate family.

Touch

“Touch” is physical contact with another person, whether accomplished directly, through the clothing of the person committing the offense, or through the clothing of the victim.

Vulgarity

“Vulgar” is the quality or state of not having good taste, manners, politeness, etc. It is something (such as a word) that is offensive or rude.

Expulsion Process

- 1) If a suspension is warranted and you believe a Recommendation for Expulsion should be made, suspend the student for five days. On the suspension form, check-off that an expulsion may be recommended, and ensure you have all necessary signatures. Continue with your investigation and evidence collection. Document. *(Just because you suspend for five days and check-off an expulsion MAY be recommended doesn't mean that you can't go back later and reduce the number of days because you change your mind about the expulsion.)*
- 2) On the same day, contact the Superintendent to determine if there is sufficient evidence to warrant a Recommendation for Expulsion. If the Recommendation for Expulsion is warranted, the Superintendent will authorize that you to continue with the process, and will arrange for a Pre-Expulsion Due Process Meeting. This meeting will be scheduled by the Superintendent, and must take place by the end of the school day on the 5th day of suspension. Document.
- 3) If the student is a Special Education student, contact the SELPA director, the school psychologist, and the student's case carrier. Notify them that you are requesting a Manifestation Determination, which must happen before the student returns from suspension. Document.
- 4) Prepare an expulsion packet. See the “Expulsion Packet Checklist” for contents.
- 5) No later than the end of the day on the 5th day of suspension, the Superintendent will meet with the student and parents for a Pre-Expulsion Due Process Meeting. At this meeting, the student and parents will:
 - a. Receive a letter notifying them that the suspension is being extended until the Board votes to expel the student.
 - b. Review the documents presented by the school in the expulsion packet.
 - c. Have an opportunity to present their side of the story.
 - d. Receive a copy of Ed Code and Board policies regarding suspension and expulsion.
 - e. Review to expulsion process.
 - f. Be offered the opportunity to sign a stipulated expulsion and waive their rights to an expulsion hearing.
 - g. Be informed that the Office of Student Services will notify the student and parents of the hearing date once it is scheduled.

Expulsion of Students with Disabilities

School personnel may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10* consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of *misconduct (as long as those removals do not constitute a change of placement under §300.536)*. (34C.F.R. §300.530)

***NOTE:** While the Code of Federal Regulations allows up to 10 consecutive days, the California Education Code §48911 allows only 5 consecutive days.

*** NOTE:** A student with disabilities who is expelled from school is still entitled to a free appropriate public education (34C.F.R. §300.530(d); EC §48915.5(b)).

Manifestation Determination for Removal of Student with a Disability

Included in this section are guidelines and/or legal references regarding removals, students served in nonpublic schools or regional programs, the manifestation determination review process, conducting a functional behavioral assessment, provision of free appropriate public education (FAPE), and interim alternative education settings.

Guidelines Regarding Removals

Below is a table consisting of various types of removals and whether or not a Manifestation Determination is required as a result of a change in placement.

Type of Removal	Change in Placement?	Manifestation Determination Required?
Short-term removal of < 10 days	NO	NO
Short-Term Removals Totaling > 10 Cumulative Days AND does NOT constitute a pattern	NO	YES
Series of Short-Term Removals Totaling > 10 Cumulative Days AND constitutes a pattern	YES	YES
Long-Term removals > 10 Consecutive Days	YES	YES

Practice Pointers

- A student with a disability cannot be suspended or expelled from school for a long-term removal of more than 10 cumulative days due to behaviors that are a manifestation of his or

her disability.

- Services (FAPE) must continue for students with disabilities who are suspended or expelled from school during any subsequent days of removal after the 10th day, and less than 10 days if services are provided to students without disabilities in similar removals.
- When the removal is NOT a change of placement, school personnel must consult at least one of the teachers of the student with a disability to determine the extent to which services are needed to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP.
- ***NOTE:** *On the date of the decision to suspend or recommend the child for expulsion, school personnel must notify the parents of the child and provide the parents with a copy of the procedural safeguards notice. (34C.F.R. §300.530(h))*
- *The LEA shall notify a foster child's attorney and the appropriate representative of the county child welfare agency of potential expulsion proceedings pending manifestation determination. (EC 48853.5(c))*

Manifestation Determination Review

Manifestation Determination Reviews need to be conducted for students with a disability when a change of placement occurs because:

A. The student has 10 cumulative days of suspension AND the removal constitutes a change in placement – IEP team meets to determine if the offenses are related to the student's disability and to see if they need to make changes in supports, services and/or placement to address the needs of the student. (34C.F.R. §300.530(d)(4))

B. The student is suspended pending expulsion (34C.F.R. §300.530(d)(5))

Per federal regulations (34C.F.R. §300.530(e-g)), such reviews need to occur within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct. The LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must 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.

***NOTE:** A written report of the "review" is provided to the parent at the IEP meeting. The following SELPA forms must be utilized in conducting Manifestation Determination Reviews.

- Notice of Manifestation Determination Review IEP Team Meeting (Appendix 2)
- Notice of Procedural Safeguards
- Manifestation Determination Review pages 1-3 (Appendix 3)
- IEP Amendment
- IEP Team Meeting Comments/Continuation Page

***NOTE:** Any formal reports referenced in the review and the cumulative records should be available to the parents and the IEP team at the meeting. If any existing assessment is more than 2 years old or if adequate information is not available to make a manifestation determination, the IEP team may wish to initiate a formal pre-expulsion assessment. The LEA must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors, and include information about social and emotional status in the assessment report.

It is the responsibility of the IEP team to determine —

- i. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or***
- ii. If the conduct in question was the direct result of the LEA's failure to implement the IEP.***

If the IEP team determined that the violation was not a manifestation of the student's disability and was not the direct result of failure to implement the IEP, school personnel will apply relevant disciplinary procedures in the same manner and duration as would be applied to a student without a disability. (34 CFR 300.530(c)).

The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that either of the above conditions was met. If this determination was made, the LEA must take immediate steps to remedy those deficiencies by either of the following actions:

- i. Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or
- ii. If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior.
- iii. In addition, except as provided in special circumstances allowing for placement in an interim alternative education setting, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.

Conducting a Functional Behavioral Assessment

Either before or not later than 10 school days after either first removing the child for more than 10 cumulative school days in a school year or commencing a removal that constitutes a change of placement (expulsion), if the LEA did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the child before the behavior that resulted in the removal from school, the agency shall convene an IEP meeting to develop an assessment plan. As soon as practicable after developing the assessment plan, the LEA shall convene an IEP meeting to develop appropriate

behavioral interventions to address that behavior, and shall implement those interventions. If the child already has a behavioral intervention plan, the IEP team shall meet to review the plan and its implementation, and modify the plan and its implementation as necessary to address the behavior. (34C.F.R. §300.530(e))

Interim Alternative Educational Settings

School personnel may remove a student to an Interim Alternative Education Setting (IAES) 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 a State Education Agency (SEA) or LEA;
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 SEA or LEA; 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 SEA or LEA.

The IEP team will determine the appropriate alternative education setting and services for this placement. (34C.F.R. §300.531) Parents can appeal the Alternative Education Setting or Manifestation Determination decision by requesting a hearing through the complaint process. (34C.F.R. §300.532) A LEA may appeal the decision if they believe maintaining the current placement of the child is substantially likely to result in injury to the child or others by requesting a hearing through the complaint process. (34C.F.R. §300.532)

Provision of a Free Appropriate Public Education (FAPE)

A LEA does not need to provide services during periods of removal of a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if services are not provided to a child without disabilities who has been similarly removed. (34 C.F.R. §300.530 (b)(1))

In the case of a child with a disability who has been removed from his or her current placement for more than 10 school days in that school year, the LEA, for the remainder of the removals, must provide services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP. (34 C.F.R. §300.530 (b)(2))

For behavior that is not a manifestation of the child's disability and a change in placement may occur, services must be provided. (34 C.F.R. §300.530 (d))

***NOTE:** The student's IEP team determines the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward

achieving the goals set out in the student's IEP if the student is removed because of behavior that has been determined **not** to be a manifestation of the student's disability.

If the IEP team determines the behavior is a manifestation of the student's disability, the IEP team should determine if further services are required and/or implement positive behavioral interventions and supports to address the student's needs.

The IEP team will make the determination of the appropriate interim alternative educational setting, if the removal is for drugs, weapons or infliction of serious bodily injury offenses (34 C.F.R. §300.530 (g)(2)(i)(ii)); or based on a hearing officer determination that maintaining the current placement of the child is substantially likely to result in injury to the child or to others if he or she remains in the current placement. (34 C.F.R. §300.532 (b)(2)(ii))

The State must ensure that all children with disabilities aged 3 through 21 residing in the State have the right to FAPE, including children with disabilities who have been suspended or expelled from school. (34 C.F.R. §300.101)

***NOTE:** In Letter to *Ramirez*, 113 LRP 3448 (OSEP December 5, 2012), OSEP opined that a hearing officer is permitted, but not required, to determine whether a student's conduct violated school rules.

Students Served by Section 504

Students who qualify as disabled under Section 504 of the Rehabilitation Act may be entitled to the same procedural safeguards as special education students. The LEA and site level school personnel should have a master list of students who have a 504 Plan. If such a student begins experiencing serious discipline problems, the team should reconvene to consider if the misconduct was caused by or is a direct manifestation of the student's identified disability and if the student was/is appropriately placed.

Protections for Students Not Determined Eligible for Special Education Services

A student may assert the same protections provided to students with disabilities if the LEA had knowledge that the student was a student with a disability prior to the behavior that required disciplinary actions occurred.

The *Basis of Knowledge* is determined by the following:

- The parent of the child expressed a concern in writing to school personnel that they believe their child requires special education and related services.
- The parent of the child in writing requested an evaluation for special education and related services.
- The teacher of the student, or other school personnel, have expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education

or site administrator.

***NOTE:** When determining *Basis of Knowledge*, it is important to consider information provided in all contexts including 504 meetings and student study team meetings. Also, districts must not limit “patterns of behavior” to behaviors that are associated with disciplinary incidents.

The following are exceptions to the *Basis of Knowledge*:

- If the parent of the student would not allow the LEA to conduct an evaluation for special education or related services.
- The student has been evaluated for special education and related services and did not meet the eligibility requirements.

If no *Basis of Knowledge* exist prior to the behavior which requires disciplinary actions,

- The LEA may use disciplinary measures which apply to students without disabilities who engage in comparable behaviors.
- If a request for assessment is made during this time period, an expedited evaluation will be conducted.
- During the evaluation period, the student will remain in the educational placement determined by school authority, which may include the continuation of the suspension and/or expulsion without educational services.
- If the evaluation determines the student meets eligibility requirements for special education and related services, the LEA must provide appropriate services in accordance to the student’s IEP.

SPECIAL EDUCATION REMOVALS FOR DISCIPLINARY PURPOSES

Category 1	Category 2	Category 3	Category 4
Less Than 10 Days	More Than 10 Cumulative Days No Change In Placement	More Than 10 Cumulative Days Change In Placement	More Than 10 Consecutive Days
Disciplinary Action: Disabled student may be disciplined in the same manner as a non-disabled student. 34 C.F.R. § 300.530(d) Educational Services: School district need only provide educational services to a disabled student if the services are offered to non- disabled students. 34 C.F.R. § 300.530(d)	Disciplinary Action: Disabled student may be disciplined in the same manner as a non-disabled student. Educational Services: On the 11th day of removal, school personnel must consult with at least one of the student's teachers to determine the extent to which special education services must be provided to enable the student to continue to participate in general education curriculum (although in a different setting) and progress toward meeting the goals delineated in the student's IEP. 34 C.F.R. § 300.530(d)(4)	Disciplinary Action: If the behavior is not a manifestation of the student's disability, the student may be disciplined as a general education student. 20 U.S.C. § 1415(k)(1)(C); 34 C.F.R. § 300.530(c) If the behavior is a manifestation of the student's disability, the school district must conduct a functional behavioral assessment and implement a behavioral intervention plan (provided that the school district had not conducted such assessment prior to the determination before the behavior resulted in a change of placement), and return the student to the previous placement unless the school district and parent agree to a change of placement or the student is placed in an interim alternative educational setting. If student already has a behavioral intervention plan, the IEP team must review and modify it, as necessary, to address the behavior. 20 U.S.C. § 1415(k)(1)(F); 34 C.F.R. § 300.530(f) Educational Services: On the 11th day of removal, the IEP team must decide on services to (1) enable the student to continue to participate in general education curriculum, (2) progress toward the IEP goals, and (3) receive a functional behavioral assessment, as appropriate, and behavioral intervention services and modifications. 20 U.S.C. § 1415(k)(1)(D); 34 C.F.R. § 300.530(b)(2)	
	Determine Whether Removal Constitutes Change in Placement: School district must determine whether a series of removals constitutes a change in placement. Must consider the length of each removal; whether the behavior in each incident is substantially similar, total time removed, and proximity in time of removals. Must be determined on a case-by-case basis. 20 U.S.C. § 1415(k)(1)(A); 34 C.F.R. §§ 300.530, 300.536		
	Interim Alternative Educational Setting: School officials may remove a student to an interim alternative educational setting for no more than 45 school days regardless of whether the behavior was a manifestation of the student's disability if the student: 1. Carried or possessed a weapon on the way to or at school, on school premises, or to or at a school function; 2. Knowingly possessed or used illegal drugs, or sold or solicited the sale of a controlled substance, while at school, on school premises or at a school function; or 3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function. The IEP team must determine the interim alternative education setting. 20 U.S.C. §§ 1415(k)(1)(G), 1415(k)(2); 34 C.F.R. § 300.530(g)		
		Manifestation Determination: Within 10 days of the decision to change the student's placement for disciplinary reasons, the school district, parent, and relevant IEP team members must meet to determine whether the student's conduct was: 1. Caused by, or had a direct and substantial relationship to, the student's disability; or 2. The direct result of the school district's failure to implement the IEP. The parents and the school district determine who qualifies as "relevant IEP team members." The team conducting the manifestation determination must review all relevant information in the student's file, including the student's IEP, teacher observations, and any relevant information provided by the parent. 20 U.S.C. § 1415(k)(1)(E); 34 C.F.R. § 300.530(e)	

This disciplinary chart is a summary only and not legal advice. We recommend that you consult with legal counsel to determine how this may apply to your specific facts and circumstances.

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EXPULSION RECOMMENDATION CHECKLIST

Student Name: _____

ID# _____

School: _____

Date: _____

School Site Responsibilities

- ☐ Expulsion Recommendation Checklist.
- ☐ Due Process Checklist.
- ☐ Principal's letter requesting expulsion.
- ☐ Notice of Suspension.
- ☐ Witness Statements and Sworn Declarations.
- ☐ Reports or citations by law enforcement or other public agencies.
- ☐ Photograph or video of incident and/or physical evidence.
- ☐ Photograph, video, or diagram of physical space, if relevant to the case.
- ☐ Written notice to foster/homeless liaison (if applicable).
- ☐ Current IEP, BIP, and/or Section 504 Plan (if applicable).

Office of Student Services Responsibilities

- ☐ Letter: Social Worker / Attorney Notification (for foster students)
- ☐ Letter: Extension of Suspension
- ☐ Letter: Notice of Expulsion Hearing
- ☐ Hearing Summary Report
- ☐ Letter: Notice of Board Meeting
- ☐ Letter: Notice of Board Action
- ☐ Letter: Referral to _____ School

NOTES:

SWORN DECLARATION OF WITNESS

In the matter of the ☐ suspension, ☐ possible expulsion or ☐ disciplinary incident of:

_____, a student at _____ School, I feel that the disclosure of my identity and my testimony as a witness at the hearing would subject me to unreasonable risk of harm.

I wish to remain anonymous because: _____

Narrative: _____

I declare under penalty of perjury that the foregoing is true and correct this ____ day of _____, 20____.

Executed at _____, California.

Declarant's Name* _____ Signature* _____

**** Name and signature will not be disclosed***

DUE PROCESS CHECKLIST – (School Principal)

DUE PROCESS ACTION TAKEN (School Site Principal)	DATE	INITIALS
A. Proper investigation - EC 48918(f)		
1. Identified participants and relevant witnesses.		
2. Interviewed witnesses.		
3. Obtained witness statements and/or sworn declarations.		
4. Collected evidence (police report, photos, videos, etc.).		
5. Entered in PowerSchool “Log Entries” page.		
B. Informal conference with student held prior to suspension - EC 48911(b)		
1. Stated charges and presented evidence to student.		
2. Provided student with opportunity to respond.		
C. Formal notice of suspension - EC 48911(d)		
1. Completed Notice of Suspension form.		
2. Formally notified student of suspension and conditions.		
3. Made reasonable effort to contact parent.		
4. Provided parent with Notice of Suspension form in-person or by mail.		
5. Notified appropriate law enforcement authorities, if applicable.		
6. Entered in PowerSchool on “Incidents” page.		
D. Notification of District Personnel - EC 48911(g), 48915.5, and 48918.1		
1. Notified Superintendent within 24 hours.		
2. Notified Superintendent within 24 hours, if student has IEP or 504 Plan.		
3. Notified Coordinator of Child Welfare and Attendance within 24 hours, if student is homeless or foster.		

DUE PROCESS CHECKLIST – (Superintendent)

DUE PROCESS ACTION TAKEN (Superintendent’s office)	DATE	INITIALS
A. IEP or 504 Plan (If Applicable) - EC 48911(g)		
1. Scheduled Manifestation Determination to occur within five (5) school days of first day of suspension.		
2. Conducted Manifestation Determination.		
3. Determined behavior is not manifestation of disability.		

B. Extension of suspension - EC 48911(g)

1. Scheduled Extension of Suspension meeting with parents to occur within five (5) school days of first day of suspension.		
2. Notified social worker and/or attorney, if foster student.		
3. Provided parent with copy of discipline policies and rights.		
4. Stated charges and presented evidence against student.		
5. Permitted student and parent with opportunity to respond.		
6. Determined if student is danger to self or others.		
7. Informed parent of interim placement and/or that suspension was extended.		
8. Informed parent of obligation to inform other schools of expulsion status, should parent disenroll student from (school name).		

C. Written notice of hearing - EC 48918(b) and (c)

At least ten (10) days prior to hearing, notified parent of following: • Date, time, and location of hearing. • Specific facts and charges. • Rights and responsibilities.		
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D. Expulsion Hearing

1. Conducted Expulsion Hearing.		
2. Received Recommendations form from Hearing Panel.		

E. Post-Hearing

1. Notified parent of Hearing Panel recommendation, and date of Board of Education meeting.		
2. Submitted expulsion recommendation on Agenda Online.		
3. Completed Hearing Summary Report.		
3. Notified parent of Board of Education vote and final action.		
3. Completed _____ School Referral (if applicable).		
3. Entered expulsion into student information system		

Expulsion Parent and Student Rights

Authority to Expel

Only the Board may expel a student. The Board shall expel, as required by law, any student found to have committed any offense listed below under "Mandatory Recommendation and Mandatory Expulsion." (Education Code 48915)

The Board also may order a student expelled for any of the acts listed above under "Grounds for Suspension and Expulsion" upon recommendation by the principal, Superintendent, hearing officer, or administrative panel, based on either or both of the following finding(s): (Education Code 48915(b) and (e))

- That other means of correction are not feasible or have repeatedly failed to bring about proper conduct
- 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

Mandatory Recommendation for Expulsion

Unless the principal, Superintendent or designee finds that expulsion is inappropriate due to particular circumstances, the principal or the Superintendent or designee shall recommend a student's expulsion for any of the following acts: (Education Code 48915(a))

- Causing serious physical injury to another person, except in self-defense
- Possession of any knife as defined in Education Code 48915(g), explosive, or other dangerous object of no reasonable use to the student
- Unlawful possession of any controlled substance, as listed in Health and Safety Code 11053-11058, except for the first offense for the possession of not more than one ounce of marijuana, other than concentrated cannabis
- Robbery or extortion
- Assault or battery, as defined in Penal Code 240 and 242, upon any school employee

Mandatory Recommendation and Mandatory Expulsion

The principal, Superintendent or designee shall recommend that the Board expel any student found at school or at a school activity to be: (Education Code 48915(c))

- Possessing, as verified by a district employee, selling, or otherwise furnishing a firearm, unless the student had obtained prior written permission to possess the firearm from a certificated

school employee, with the principal or designee's concurrence

- Brandishing a knife as defined in Education Code 48915(g) at another person
- Unlawfully selling a controlled substance listed in Health and Safety Code 11053-11058
- Committing or attempting to commit a sexual assault or committing a sexual battery as defined in item #14 under "Grounds for Suspension and Expulsion" above
- Possessing an explosive as defined in 18 USC 921

Upon finding that the student committed any of the above acts, the Board shall expel the student. (Education Code 48915)

Students Right to Expulsion Hearing

The student is entitled to a hearing to determine whether the student should be expelled. The hearing shall be held within 30 school days after the principal or Superintendent or designee determines that one of the acts listed under "Grounds for Suspension and Expulsion" has occurred. (Education Code 48918(a))

The student is entitled to at least one postponement of an expulsion hearing for a period of not more than 30 calendar days. The request for postponement shall be in writing. Any subsequent postponement may be granted at the Board's discretion. (Education Code 48918(a))

If the Board finds it impractical during the regular school year to comply with these time requirements for conducting an expulsion hearing, the Superintendent or designee may, for good cause, extend the time period by an additional five school days. Reasons for the extension shall be included as a part of the record when the expulsion hearing is held. (Education Code 48918(a))

If the Board finds it impractical to comply with the time requirements of the expulsion hearing due to a summer recess of Board meetings of more than two weeks, the days during the recess shall not be counted as school days. The days not counted during the recess may not exceed 20 school days, as defined in Education Code 48925. Unless the student requests in writing that the expulsion hearing be postponed, the hearing shall be held not later than 20 calendar days prior to the first day of the next school year. (Education Code 48918(a))

Once the hearing starts, all matters shall be pursued with reasonable diligence and concluded without unnecessary delay. (Education Code 48918(a))

Rights of Complaining Witness

An expulsion hearing involving allegations of sexual assault or sexual battery may be postponed for one school day in order to accommodate the special physical, mental, or emotional needs of a student who

is the complaining witness. (Education Code 48918.5)

Whenever the Superintendent or designee recommends an expulsion hearing that addresses allegations of sexual assault or sexual battery, he/she shall give the complaining witness a copy of the district's suspension and expulsion policy and regulation and shall advise the witness of his/her right to: (Education Code 48918.5)

- Receive five days' notice of his/her scheduled testimony at the hearing
- Have up to two adult support persons of his/her choosing present at the hearing at the time he/she testifies
- Have a closed hearing during the time he/she testifies

Whenever any allegation of sexual assault or sexual battery is made, the Superintendent or designee shall immediately advise complaining witnesses and accused students to refrain from personal or telephone contact with each other during the time when an expulsion process is pending. (Education Code 48918.5)

Written Notice of the Expulsion Hearing

Written notice of the expulsion hearing shall be forwarded to the student and the student's parent/guardian at least 10 calendar days before the date of the hearing. The notice shall include: (Education Code 48900.8, 48918(b))

- The date and place of the hearing.
- A statement of the specific facts, charges, and offense upon which the proposed expulsion is based.
- A copy of district disciplinary rules which relate to the alleged violation.
- Notification of the student's or parent/guardian's obligation, pursuant to Education Code 48915.1, to provide information about the student's status in the district to any other district in which the student seeks enrollment. This obligation applies when a student is expelled for acts other than those described in Education Code 48915(a) or (c).
- The opportunity for the student or the student's parent/guardian to appear in person or be represented by legal counsel or by a non-attorney advisor.
 - Legal counsel means an attorney or lawyer who is admitted to the practice of law in California and is an active member of the State Bar of California.
 - Non-attorney advisor means an individual who is not an attorney or lawyer, but who is

familiar with the facts of the case and has been selected by the student or student's parent/guardian to provide assistance at the hearing.

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

Conduct of Expulsion Hearing

- 1) Closed Session: Notwithstanding the provisions of Government Code 54953 and Education Code 35145, the Board shall conduct a hearing to consider the expulsion of the student in a session closed to the public unless the student requests in writing at least five days prior to the hearing that the hearing be a public meeting. If such request is made, the meeting shall be public unless another student's privacy rights would be violated. (Education Code 48918(c)) Whether the expulsion hearing is held in closed or public session, the Board may meet in closed session to deliberate and determine whether or not the student should be expelled. If the Board admits any other person to this closed session, the parent/guardian, the student, and the counsel of the student also shall be allowed to attend the closed session. (Education Code 48918(c)) If a hearing that involves a charge of sexual assault or sexual battery is to be conducted in public, a complaining witness shall have the right to have his/her testimony heard in closed session when testifying in public would threaten serious psychological harm to the witness and when there are no alternative procedures to avoid the threatened harm, including, but not limited to, videotaped deposition or contemporaneous examination in another place communicated to the hearing room by closed-circuit television. (Education Code 48918(c))
- 2) See sample Expulsion Script for the Board Chair at the end of this document.
- 3) Record of Hearing: A record of the hearing shall be made and may be maintained by any means, including electronic recording, as long as a reasonably accurate and complete written transcription of the proceedings can be made. (Education Code 48918(g))
- 4) Subpoenas: Before commencing a student expulsion hearing, the Board may issue subpoenas, at the request of either the student or the Superintendent or designee, for the personal appearance at the hearing of any person who actually witnessed the action that gave rise to the recommendation for expulsion. After the hearing has commenced, the Board or the hearing officer or administrative panel may issue such subpoenas at the request of the student or the County Superintendent of Schools or designee. All subpoenas shall be issued in accordance with the Code of Civil Procedure 1985-1985.2 and enforced in accordance with Government Code 11455.20. (Education Code 48918(i)) Any objection raised by the student or the Superintendent or designee to the issuance of subpoenas may be considered by the Board in closed session, or in open session if so requested by the student, before the meeting. The Board's decision in response to such an objection shall be final and binding. (Education Code

48918(i)) If the Board determines, or if the hearing officer or administrative panel finds and submits to the Board, that a witness would be subject to unreasonable risk of harm by testifying at the hearing, a subpoena shall not be issued to compel the personal attendance of that witness at the hearing. However, that witness may be compelled to testify by means of a sworn declaration as described in item #4 below. (Education Code 48918(i))

- 5) Presentation of Evidence: Technical rules of evidence shall not apply to the expulsion hearing, but relevant 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. The decision of the Board to expel shall be supported by substantial evidence that the student committed any of the acts pursuant to Education Code 48900 and listed in "Grounds for Suspension and Expulsion" above. (Education Code 48918(h)) Findings of fact shall be based solely on the evidence at the hearing. While no finding shall be based solely on hearsay, sworn declarations may be admitted as testimony from witnesses whose disclosure of their identity or testimony at the hearing may subject them to an unreasonable risk of physical or psychological harm. (Education Code 48918(f)) In cases where a search of a student's person or property has occurred, evidence describing the reasonableness of the search shall be included in the hearing record.
- 6) Testimony by Complaining Witnesses: The following procedures shall be observed when hearings involve allegations of sexual assault or sexual battery by a student: (Education Code 48918, 48918.5)
 - a. Any complaining witness shall be given five days' notice before being called to testify.
 - b. Any complaining witness shall be entitled to have up to two adult support persons, including, but not limited to, a parent/guardian or legal counsel, present during his/her testimony.
 - c. Before a complaining witness testifies, support persons shall be admonished that the hearing is confidential.
 - d. The person presiding over the hearing may remove a support person whom he/she finds is disrupting the hearing.
 - e. If one or both support persons are also witnesses, the hearing shall be conducted in accordance with Penal Code 868.5.
 - f. Evidence of specific instances of prior sexual conduct of a complaining witness shall be presumed inadmissible and shall not be heard unless the person conducting the hearing determines that extraordinary circumstances require the evidence to be heard. Before such a determination is made, the complaining witness shall be given notice and an opportunity to oppose the introduction of this evidence. In the hearing on the admissibility of this evidence, the complaining witness shall be entitled to be represented by a parent/guardian, legal counsel, or other support person. Reputation or opinion evidence regarding the sexual behavior of a complaining witness shall not be admissible for any purpose.

- g. In order to facilitate a free and accurate statement of the experiences of the complaining witness and to prevent discouragement of complaints, the district shall provide a nonthreatening environment.
 - i. The district shall provide a room separate from the hearing room for the use of the complaining witness before and during breaks in testimony.
 - ii. At the discretion of the person conducting the hearing, the complaining witness shall be allowed reasonable periods of relief from examination and cross-examination during which he/she may leave the hearing room.
 - iii. The person conducting the hearing may:
 - iv. Arrange the seating within the hearing room so as to facilitate a less intimidating environment for the complaining witness
 - v. Limit the time for taking the testimony of a complaining witness to the hours he/she is normally in school, if there is no good cause to take the testimony during other hours
 - vi. Permit one of the support persons to accompany the complaining witness to the witness stand
- 7) Decision Within 10 School Days: The Board's decision on whether to expel a student shall be made within 10 school days after the conclusion of the hearing, unless the student requests in writing that the decision be postponed. (Education Code 48918(a))
- 8) Decision Within 40 School Days: If the Board does not meet on a weekly basis, its decision on whether to expel a student shall be made within 40 school days after the student is removed from his/her school of attendance, unless the student requests in writing that the decision be postponed. (Education Code 48918(a))

Alternative Expulsion Hearing: Hearing Officer or Administrative Panel

Instead of conducting an expulsion hearing itself, the Board may contract with the county hearing officer or with the Office of Administrative Hearings of the State of California for a hearing officer. Alternatively, the Board may appoint an impartial administrative panel composed of three or more certificated personnel, none of whom shall be members of the Board or on the staff of the school in which the student is enrolled. (Education Code 48918(d))

A hearing conducted by the hearing officer or administrative panel shall conform to the same procedures applicable to a hearing conducted by the Board as specified above in "Conduct of Expulsion Hearing." (Education Code 48918(d))

The hearing officer or administrative panel shall, within three school days after the hearing, determine whether to recommend expulsion of the student to the Board. If expulsion is not recommended, the expulsion proceeding shall be terminated and the student shall be immediately reinstated. The Superintendent or designee shall place the student in a classroom instructional program, any other instructional program, a rehabilitation program, or any combination of these programs after consulting with district staff, including the student's teachers, and with the student's parent/guardian. The decision to not recommend expulsion shall be final. (Education Code 48918(e))

If expulsion is recommended, findings of fact in support of the recommendation shall be prepared and submitted to the Board. All findings of fact and recommendations shall be based solely on the evidence presented at the hearing. The Board may accept the recommendation based either upon a review of the findings of fact and recommendations submitted or upon the results of any supplementary hearing the Board may order. (Education Code 48918(f))

In accordance with Board policy, the hearing officer or administrative panel may recommend that the Board suspend the enforcement of the expulsion for a period of one year. (Education Code 48917, 48918)

The Board shall make its decision about the student's expulsion within 40 school days after the date of the student's removal from school unless the student requests in writing that the decision be postponed. (Education Code 48918(a))

Final Action by the Board

Whether the expulsion hearing is conducted in closed or public session by the Board, a hearing officer, or an administrative panel, the final action to expel shall be taken by the Board at a public meeting. (Education Code 48918(j))

If the Board conducts the hearing and reaches a decision not to expel, this decision shall be final and the student shall be reinstated immediately.

Upon ordering an expulsion, the Board shall set a date when the student shall be reviewed for readmission to a school within the district. For a student expelled for an act listed under "Mandatory Recommendation and Mandatory Expulsion" above, this date shall be one year from the date the expulsion occurred, except that the Board may set an earlier date on a case-by-case basis. For a student expelled for other acts, this date shall be no later than the last day of the semester following the semester in which the expulsion occurred. If an expulsion is ordered during the summer session or the intersession period of a year-round program, the Board shall set a date when the student shall be reviewed for readmission not later than the last day of the semester following the summer session or intersession period in which the expulsion occurred. (Education Code 48916)

At the time of the expulsion order, the Board shall recommend a plan for the student's rehabilitation, which may include: (Education Code 48916)

- Periodic review, as well as assessment at the time of review, for readmission
- Recommendations for improved academic performance, tutoring, special education

assessments, job training, counseling, employment, community service, or other rehabilitative programs

With parent/guardian consent, students who have been expelled for reasons relating to controlled substances or alcohol may be required to enroll in a county-sponsored drug rehabilitation program before returning to school. (Education Code 48916.5)

Written Notice to Expel

The Superintendent or designee shall send written notice of the decision to expel to the student or parent/guardian. This notice shall include the following:

- The specific offense committed by the student for any of the causes for suspension or expulsion listed in Education Code 48900, 48900.2, 48900.3, 48900.4, 48900.7, or 48915 (Education Code 48900.8)
- The fact that a description of readmission procedures will be made available to the student and his/her parent/guardian (Education Code 48916)
- Notice of the right to appeal the expulsion to the County Board of Education (Education Code 48918)
- Notice of the alternative educational placement to be provided to the student during the time of expulsion (Education Code 48918)
- 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 expelling district, pursuant to Education Code 48915.1 (Education Code 48918)

Decision Not to Enforce Expulsion Order

In accordance with Board policy, when deciding whether to suspend the enforcement of an expulsion, the Board shall take into account the following criteria:

- The student's pattern of behavior
- The seriousness of the misconduct
- The student's attitude toward the misconduct and his/her willingness to follow a rehabilitation program

The suspension of the enforcement of an expulsion shall be governed by the following:

- The Board may, as a condition of the suspension of enforcement, assign the student to a school, class, or program appropriate for the student's rehabilitation. This rehabilitation program may provide for the involvement of the student's parent/guardian in the student's

education. However, a parent/guardian's refusal to participate in the rehabilitation program shall not be considered in the Board's determination as to whether the student has satisfactorily completed the rehabilitation program. (Education Code 48917)

- During the period when enforcement of the expulsion order is suspended, the student shall be on probationary status. (Education Code 48917)
- The suspension of the enforcement of an expulsion order may be revoked by the Board if the student commits any of the acts listed under "Grounds for Suspension and Expulsion" above or violates any of the district's rules and regulations governing student conduct. (Education Code 48917)
- When the suspension of the enforcement of an expulsion order is revoked, a student may be expelled under the terms of the original expulsion order. (Education Code 48917)
- Upon satisfactory completion of the rehabilitation assignment, the Board shall reinstate the student in a district school. Upon reinstatement, the Board may order the expunging of any or all records of the expulsion proceedings. (Education Code 48917)
- The Superintendent or designee shall send written notice of any decision to suspend the enforcement of an expulsion order during a period of probation to the student or parent/guardian. The notice shall also inform the parent/guardian of the right to appeal the expulsion to the County Board, the alternative educational placement to be provided to the student during the time of expulsion, and 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 expelling district, pursuant to Education Code 48915. (Education Code 48918(j))
- Suspension of the enforcement of an expulsion order shall not affect the time period and requirements for the filing of an appeal of the expulsion order with the County Board. (Education Code 48917)

Right to Appeal

The student or parent/guardian is entitled to file an appeal of the Board's decision with the County Board. The appeal must be filed within 30 days of the Board's decision to expel, even if the expulsion action is suspended and the student is placed on probation. (Education Code 48919)

The student shall submit a written request for a copy of the written transcripts and supporting documents from the district simultaneously with the filing of the notice of appeal with the County Board. The district shall provide the student with these documents within 10 school days following the student's written request. (Education Code 48919)

Notification to Law Enforcement Authorities

Prior to the suspension or expulsion of any student, the principal or designee shall notify appropriate

city or county law enforcement authorities of any student acts of assault which may have violated Penal Code 245. (Education Code 48902)

The principal or designee also shall notify appropriate city or county law enforcement authorities of any student acts, which may involve the possession or sale of narcotics or of a controlled substance. In addition, law enforcement authorities shall be notified regarding any acts by students or nonstudents regarding the possession, sale, or furnishment of firearms, explosives, or other dangerous weapons in violation of Education Code 48915(c)(1) or (5) or Penal Code 626.9 and 626.10. (Education Code 48902)

Within one school day after a student's suspension or expulsion, the principal or designee shall notify appropriate city or county law enforcement authorities, by telephone or other appropriate means, of any student acts which may violate Education Code 48900(c) or (d), relating to the possession, use, offering, or sale of controlled substances, alcohol, or intoxicants of any kind. (Education Code 48902)

Post-Expulsion Placements

The Board shall refer expelled students to a program of study that is: (Education Code 48915, 48915.01)

- Appropriately prepared to accommodate students who exhibit discipline problems
- Not provided at a comprehensive middle, junior, or senior high school or at any elementary school, unless the program is offered at a community day school established at such a site
- Not housed at the school site attended by the student at the time of suspension

When the placement described above is not available, and when the County Superintendent so certifies, students expelled for acts described in items #6-13 and #19-21 under "Grounds for Suspension and Expulsion" above may be instead referred to a program of study that is provided at another comprehensive middle, junior, or senior high school, or at an elementary school. (Education Code 48915) The program for a student expelled from any of grades K-6 shall not be combined or merged with programs offered to students in any of grades 7-12. (Education Code 48916.1)

Expelled Student Rights

If the governing board of a school district receives a request from an individual who has been expelled from another school district for an act other than those described in subdivision (a) or (c) of Section 48915, for enrollment in a school maintained by the school district, the board shall hold a hearing to determine whether that individual poses a continuing danger either to the pupils or employees of the school district. The hearing and notice shall be conducted in accordance with the rules and regulations governing procedures for the expulsion of pupils as described in Section 48918. A school district may request information from another school district regarding a recommendation for expulsion or the expulsion of an applicant for enrollment. The school district receiving the request shall respond to the request with all deliberate speed but shall respond no later than five working days from the date of the receipt of the request.

Readmission After Expulsion

Readmission procedures shall be as follows:

- 1) On the date set by the Board when it ordered the expulsion, the district shall consider readmission of the student. (Education Code 48916)
- 2) The Superintendent or designee shall hold a conference with the parent/guardian and the student. At the conference the student's rehabilitation plan shall be reviewed and the Superintendent or designee shall verify that the provisions of this plan have been met. School regulations shall be reviewed and the student and parent/guardian shall be asked to indicate in writing their willingness to comply with these regulations.
- 3) The Superintendent or designee shall transmit to the Board his/her recommendation regarding readmission. The Board shall consider this recommendation in closed session if information would be disclosed in violation of Education Code 49073-49079. If a written request for open session is received from the parent/guardian or adult student, it shall be honored.
- 4) If the readmission is granted, the Superintendent or designee shall notify the student and parent/guardian, by registered mail, of the Board's decision regarding readmission.
- 5) The Board may deny readmission only if it finds that the student has not satisfied the conditions of the rehabilitation plan or that the student continues to pose a danger to campus safety or to other district students or employees. (Education Code 48916)
- 6) If the Board denies the readmission of a student, the Board shall determine either to continue the student's placement in the alternative educational program initially selected or to place the student in another program that serves expelled students, including placement in a county community school. (Education Code 48916)
- 7) The Board shall provide written notice to the expelled student and parent/guardian describing the reasons for denying re-admittance into the regular program. This notice shall indicate the Board's determination of the educational program, which the Board has chosen. The student shall enroll in that program unless the parent/guardian chooses to enroll the student in another school district. (Education Code 48916)

Maintenance of Records

The Board shall maintain a record of each expulsion, including the specific cause of the expulsion. The expulsion record shall be maintained in the student's mandatory interim record and sent to any school in which the student subsequently enrolls upon receipt of a written request by the admitting school. (Education Code 48900.8, 48918(k))

The Superintendent or designee shall, within five working days, honor any other district's request for information about an expulsion from this district. (Education Code 48915.1)

Outcome Data

The Superintendent or designee shall maintain the following data: (Education Code 48900.8, 48916.1)

- The number of students recommended for expulsion
- The specific grounds for each recommended expulsion
- Whether the student was subsequently expelled
- Whether the expulsion order was suspended
- The type of referral made after the expulsion
- The disposition of the student after the end of the expulsion period

Extension of Suspension Pre-Letter (sample)

[Date]

[Parent's Name]

[Address]

Re: Extension of Suspension of Student

Dear Parent:

Following a review of the facts surrounding the incident of [date], as superintendent's designee for the district, I am considering the extension of the suspension of [student's name] and I am considering recommending expulsion. I would appreciate it if you would attend a conference to discuss the possible extension of suspension and recommendation to expel your child on [date and time] in my office.

Very truly yours,

Superintendent

Extension of Suspension Post-Letter (sample)

[Date]

[Parent's Name]

[Address]

Re: Extension of Suspension of Student

Dear Parent:

Following our conference regarding the extension of the suspension of your child, [Name of Student], I have decided to extend the suspension and recommend expulsion.

During the conference, we discussed the circumstances surrounding the incident of [Date]. The incident involved [Brief Description of the Incident]. I find that the return of your son to [Name of School] or to an alternative school placement in the District would cause a danger to persons or property or a threat of disrupting the educational process. Therefore, I have decided to extend the suspension of John Doe pending expulsion and have recommended expulsion.

During the suspension, your student is expected to remain at home under adult supervision and may not attend school activities or be on the school campus. The teacher may require your child to complete any assignments and tests missed during the period of suspension.

Very truly yours,

Superintendent

NOTICE OF EXPULSION HEARING (sample)

[Date]

[Parent's Name]

[Parent's Address]

Re: Notice of Expulsion Hearing

Dear Parent:

You are hereby given notice that the expulsion hearing for your child, [Student's Name], will be held on [date and time] before an administrative panel of three school administrators. The hearing will be held at [location].

The specific charges are that on or about [date and time], [location], [description of incident].

Enclosed is a copy of the District's policy with respect to student conduct, student suspension and student expulsion. At the hearing, you have a right to represent yourself or obtain legal counsel. You have the right to inspect and obtain copies of all documents to be used at the hearing, and you have the right to confront and question all witnesses who testify at the hearing, question all other evidence presented, and present oral and documentary evidence on the student's behalf, including witnesses.

The hearing will be closed to the public, unless you request an open hearing, in writing, five days prior to the hearing.

If you have any questions, please call me.

Very truly yours,
Superintendent

NOTICE OF EXPULSION HEARING (sample #2)

(Date)

(Parent name)

(Parent address)

Dear (parent),

This is to inform you that I have referred your daughter/son to the Board of Trustees with a recommendation for expulsion from the (school) Elementary School District.

The request for expulsion is based on allegations of violation of Education Code Section 48900

<EXAMPLE>

(a) (1) Caused, attempted to cause, or threatened to cause physical injury to another person

(a) (2) Willfully used force or violence upon the person of another, except in self-defense

(b) Possessed, sold, or furnished any knife, firearm, dangerous object or explosive

You are requested to attend a hearing before the Board of Trustees to be held on (date) at (time) in room ____, which is located at (physical address). A request for postponement must be made in writing and must be received at least five working days prior to the date of the hearing. If you desire a public hearing, you must notify me in writing at least five working days prior to (date of hearing), which means by (date of notification).

You are notified of the opportunity to:

1. Appear in person or to employ and be represented by attorney or non attorney advisor (if you are represented by attorney or non attorney advisor, please notify me on or before March 22, 2017, three days before the hearing date);
2. Inspect and obtain copies of all documents to be used at the hearing;
3. Confront and question all witnesses who may testify at the hearing;
4. Question and challenge all other evidence presented;
5. Present oral and documentary evidence on the student's behalf.
- 6.

Should you have questions or should you have need of any additional services you may contact me between the hours of ____ and ____ at (phone number).

Sincerely,

Superintendent

Sample Board Finding

BEFORE THE GOVERNING BOARD OF THE (SCHOOL) ELEMENTARY SCHOOL DISTRICT

In the Matter of the
Expulsion of
(student name)
_____ /

FINDINGS AND DECISION

This matter was heard before the Governing Board of the (school) Elementary School District on [date]. Present were [list all persons present, starting with Board members, then District employees/counsel, then parent/guardian/student/counsel].

Having considered all evidence admitted at the hearing and the testimony presented at the hearing, the Board makes the following findings and decision.

FINDINGS OF FACT

The Governing Board finds that [state substance of findings in relation to **all** the charges for expulsion; e.g., on [date], [student's name] was in possession of a controlled substance, to wit, cocaine at [location]. At that time and place, student was also in possession of paraphernalia for inhaling cocaine, and stolen school property, to wit, a scale. (Etc.).]

[For all offenses not listed in Education Code section 48915(c):] The Governing Board also finds that: [choose one or both of the following as appropriate] (1) other means of correction are not feasible or have repeatedly failed to bring about proper conduct and/or (2) due to the nature of the act, the presence of the pupil causes a continuing danger to the physical safety of pupils or others.] [State reasons for the above findings based on evidence from the hearing]

DETERMINATION OF ISSUES

Based on these facts, [state determination of issues in relation to the findings of fact; e.g., grounds exist for [student's name] expulsion from the District for violation of Education Code section 48900 [use subdivision(s)] [and/or, if appropriate, section 48900.2, 48900.3, 48900.4, and/or 48900.7] and Board Policy and Regulations No. [number].].

ORDER OF EXPULSION

(Student name) shall be expelled as a student of (school) Elementary School District for [fill one or two semesters or one calendar year depending on the offense], including the [fill semester] of the [fill] school year and the [fill semester] of the [fill] school year, effective immediately. Megan may apply for readmission to the full programs of the District after [fill date]. The Governing Board shall follow District policy and regulations governing procedures for readmission. During the

term of her expulsion, (student) is referred to the following education program for the period of expulsion: [ADD PLACEMENT IF EXPULSION ORDER IS ENFORCED/THIS IS OFTEN THE COUNTY OFFICE OF EDUCATION'S COMMUNITY DAY SCHOOL].

REHABILITATION PLAN

Based on the foregoing, the Governing Board recommends the following rehabilitation plan: [e.g. the student enroll in a drug rehabilitation plan, the student receive psychological counseling to resolve aggressive behavior, the student attend and participate in the conference for readmission as by the Governing Board; comply with District rules and not violate the Education Code].

(if applicable)

SUSPENSION OF EXPULSION ORDER

The Governing Board orders the expulsion of (student) suspended, effective immediately. (See Ed. Code, § 48916, 48917.) (student) shall be placed at the [fill] during the period of her suspended expulsion, including the [fill semester] of the [fill] school year and the [fill semester] of the [fill] school year. (student) may apply for readmission to the full programs of the District on or after [fill date]. (student) must abide by the Rehabilitation Plan set forth in this Decision. Should it be found that Megan does not fulfill the requirements of the Rehabilitation Plan during the term of the suspended expulsion, the expulsion order herein shall be reinstated.

PASSED AND ADOPTED by the Governing Board of the (school) Elementary School District on this [date, __ day of ____, 201_] by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

[signature of clerk]

Trinity County SELPA MANIFESTATION DETERMINATION FINDINGS

Student:	Birth date:	Date
District of Residence:	School:	Gender
Teacher:	Grade:	
Parent/Guardian:	Phone:	
Address:	City:	Zip:

Is the student limited in English proficiency? ☐ Yes ☐ No

Primary Language:

Date of Current IEP:

Date of last assessment:

Disability:

Current educational setting(s):

Description of behavior/actions of student resulting in this analysis:

Disciplinary action taken/proposed:

Date of decision of disciplinary action:

In determining whether the student's behavior was a manifestation of his/her disability, the manifestation determination team considered the following in relation to the behavior subject to discipline (check applicable items):

☐ Evaluation and diagnostic results:

☐ Observations of the student:

☐ Student's IEP, services, and placement:

☐ Other relevant information: N/A.

The Manifestation Determination team determined that, in relation to the behavior subject to disciplinary action:

☐ Yes ☐ No The behavior was caused by or had a direct and substantial relationship to the disability.
Comments:

☐ Yes ☐ No The behavior was the direct result of a failure to implement the IEP.
Comments:

The Manifestation Determination team decided that the student's behavior:

☐ **was a manifestation of his/her disability.** (requires a "yes" on any 1 of the above 2 items)

Discipline proceeding may not occur at this time.

Programming recommendations are:

☐ **was not a manifestation of his/her disability.** (requires a "no" on both of the 2 above items)

Proceed with disciplinary proceedings, all conditions have been met. (Behavior not a manifestation of student's disability, student understood impact and consequences of behavior, student could control behavior, and services and supports were correct at time of incident)

Parent: ☐ agrees ☐ disagrees with the determination of the Manifestation Determination team.

Comments: _____

Parent received copy of Procedural Safeguards (Parent Rights): ☐ Yes ☐ No Date: _____

Signatures:

Parent

Date: __/__/__

Parent

Date: __/__/__

Date: __/__/__

Title

Date: __/__/__

Title

Date: __/__/__

Title

Date: __/__/__

Title

Date: __/__/__

Title

Date: __/__/__

Title

Discipline Determination Process (provided by DWK)



Determining Whether to Impose Alternate Means of Correction, Suspension, or Expulsion When Students Have Violated the Code of Conduct & Requirements Arising From the Disciplinary Decision

1. Is the Student's misconduct related to a school activity or school attendance?
 - ☐ NO, no discipline may be imposed.
 - ☐ YES, did the Student's misconduct occur:
 - ☐ While on school grounds;
 - ☐ While going to or coming from school;
 - ☐ During the lunch period whether on or off the campus;
 - ☐ During, or while going to or coming from, a school-sponsored activity; or,
 - ☐ Other: _____¹
 - ☐ If none, no discipline may be imposed.
2. If yes, have alternate means of correction been attempted and failed? Other means of correction can include (Check all that apply):²
 - ☐ A conference between school personnel, the student's parent or guardian, and the student;
 - ☐ Referrals to the school counselor, psychologist, social worker, child welfare attendance personnel, or other school support service personnel for case management and counseling;
 - ☐ Study teams, guidance teams, resource panel teams, or other intervention-related teams that assess the behavior, and develop and implement individualized plans to address the behavior in partnership with the student and his or her parents;
 - ☐ Referral for a comprehensive psychosocial or psychoeducational assessment, including for purposes of creating an individualized education program, or a plan adopted pursuant to Section 504 of the federal Rehabilitation Act of 1973;
 - ☐ Enrollment in a program for teaching prosocial behavior or anger management;
 - ☐ Participation in a restorative justice program;

¹ A student may not be suspended or expelled for any of the listed acts UNLESS the act is related to a school activity or school attendance (Educ. Code § 48900.5, subd. (s).)

² Educ. Code § 48900.5, subd. (b)

- ☐ A positive behavior support approach with tiered interventions that occur during the school day on campus;
- ☐ After-school programs that address specific behavioral issues or expose students to positive activities and behaviors, including, but not limited to, those operated in collaboration with local parent and community groups;
- ☐ Community service on-school grounds or (with parental permission) off school grounds, during the student's non-school hours; or,
- ☐ Other: _____

Alternative means of correction must be attempted before discipline may be imposed, subject to certain exceptions, discussed below.

3. Other Means of Correction Required

Only when other means of correction have already failed to bring about proper conduct, a student may be suspended or recommended for expulsion for the following misconduct (*Check all that apply*):³

- ☐ Caused or attempted to cause damage to school property. (Educ. Code § 48900(f));
- ☐ Stole or attempted to steal school property or private property. (Educ. Code § 48900(g));
- ☐ Possessed or used tobacco, or products containing tobacco or nicotine products. (Educ. Code § 48900(h));
- ☐ Committed an obscene act or engaged in habitual profanity or vulgarity. (Educ. Code § 48900(i));
- ☐ Unlawfully possessed, offered, arranged, or negotiated to sell drug paraphernalia. (Educ. Code § 48900(j));
- ☐ Disrupted school activities or otherwise willfully defied school personnel engaged in the performance of their duties. (Educ. Code § 48900(k));
 - ☐ Except for a teacher's discretion to suspend a student from class for 2 days, a student enrolled in grades from Kindergarten to third grade may not be suspended for this offense.
 - ☐ This shall not constitute grounds for a recommendation for expulsion for any student, grades Kindergarten through 12.
- ☐ Knowingly received stolen school property or private property. (Educ. Code § 48900(l));
- ☐ Possessed an imitation firearm. (Educ. Code § 48900(m));
- ☐ Harassed, threatened, or intimidated a student who is a complaining witness or a witness in a school disciplinary proceeding for purposes of either preventing that student from being a witness or retaliating against that student for being a witness, or both. (Educ. Code § 48900(o));

³ Educ. Code § 48900.5(a). Note where the misconduct listed in this section involves components of misconduct listed in the prior section, e.g., "bullying with force or violence," then student may be suspended without imposing alternative means of correction.

- ☐ Unlawfully offered, arranged to sell, negotiated to sell, or sold the prescription drug Soma. (Educ. Code § 48900(p));
- ☐ Engaged in, or attempted to engage in, hazing. (Educ. Code § 48900(q));
- ☐ Engaged in an act of bullying. (Educ. Code § 48900(r));
- ☐ Sexual harassment. (Educ. Code § 48900.2);
- ☐ Caused, attempted to cause, threatened, or participated in act of hate violence. (Educ. Code § 48900.3);
- ☐ Intentional harassment, threat, or intimidation against school district personnel or students severe or pervasive enough to actually or could reasonably be expected to materially disrupt class work, create substantial disorder, or create an intimidating or hostile educational environment. (Educ. Code § 48900.4);
- ☐ Made terroristic threats against school officials or school property. (Educ. Code § 48900.7);

NOTE: The Legislature also intends for alternatives to suspension or expulsion to be imposed against student who is truant, tardy, or otherwise absent from school activities.

4. Exceptions to Other Means of Correction Requirement

A student may not be suspended or recommended for expulsion upon a first offense if no other means of correction have been attempted, unless (1) the principal or designee determines³ the student's presence at school causes a danger to persons and/or (2) pursuant to specific misconduct and standards dictated by the Education Code and set forth below.

A. The following student misconduct MAY result in a suspension and/or recommendation for expulsion without first attempting other means of correction (*Check all that apply*):

- ☐ Causing serious physical injury except in self-defense. (Educ. Code § 48915(a)(1)(A));
- ☐ Possession of a knife or other dangerous object of no reasonable use to the student. (Educ. Code § 48915(a)(1)(B));
- ☐ Unlawful possession of certain controlled substances. (Educ. Code § 48915(a)(1)(C));
- ☐ Robbery or extortion. (Educ. Code § 48915(a)(1)(D));
- ☐ Assault and battery on any school employee. (Educ. Code § 48915(a)(1)(E));
- ☐ Caused, attempted to cause, or threatened to cause physical injury to another person or willfully used force or violence upon another person. (Educ. Code § 48900(a)(1-2));
- ☐ Possessed, sold, or otherwise furnished a weapon without written permission of the school. (Educ. Code § 48900(b));
- ☐ Unlawfully possessed, used, sold, or otherwise furnished, or was under the influence of, a controlled substance, alcoholic beverage, or intoxicant of any kind. (Educ. Code § 48900(c));

⁴ Educ. Code § 48900, subd. (w)

⁵ Following a meeting with the student and/or his parent(s). Ed Code, § 48911.

- ☐ Unlawfully offered, arranged, or negotiated to sell a controlled substance, alcoholic beverage, or intoxicant of any kind or any liquid, substance or material represented to be a controlled substance, alcoholic beverage or intoxicant of any kind. (Educ. Code § 48900(d)); or
- ☐ Committed or attempted to commit robbery or extortion. (Educ. Code § 48900(e)).

In the above-listed circumstances, the Principal has discretion to determine that expulsion should not be recommended under the circumstances or that an alternative means of correction would address the conduct.

- B. The following student misconduct SHALL result in immediate suspension and recommendation for expulsion without first attempting other means of correction (Check all that apply):⁶
- ☐ Possessing, selling, or otherwise furnishing a firearm and possession is verified by an employee of a school district.
 - ☐ **EXCEPTION:** Pupil obtained prior written permission to possess the firearm from a certificated school employee, which is concurred in by the principal or the designee of the principal.
 - ☐ Brandishing a knife at another person.
 - ☐ Unlawfully selling a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.
 - ☐ Committing or attempting to commit a sexual assault as defined in subdivision (n) of Section 48900 or committing a sexual battery as defined in subdivision (n) of Section 48900.
 - ☐ Possession of an explosive.

NOTE: Even where the student is subject to discipline for any of the above misconduct pursuant to Section 48915, and assuming the principal or designees does not determine the student's presence is a danger to others, *the principal or designee should use his or her discretion to determine whether means of correction other than suspension or expulsion would be age appropriate and able to address and correct the student's specific misbehavior without the use of suspension and/or expulsion.*

⁶ § 48915(c)

⁷ Educ. Code § 48900.5(a); see also § 48900(v).

5. **Imposing Suspension**

A. **Authority of Teacher:** May suspend student from his/her class, only, for the *day of the suspension and one day following* the suspension.

- ☐ Immediately reported the suspension to the principal and sent student to principal for appropriate action.
- ☐ Requested parent-teacher conference with parent/guardian of student regarding the suspension (must be done ASAP).
- ☐ Student did not attend another regular class, during the same time as the class from which he/she was suspended, during the period of the suspension.
- ☐ Student returned to classroom, *only with*:
 - ☐ Concurrence of Teacher; and,
 - ☐ Concurrence of Principal.

B. **Authority of Principal/Superintendent:** May suspend a student from the school for no more than *5 consecutive school days*.

- ☐ Prior to suspension, informal conference with the student held, including:
 - ☐ Student given the evidence against him/her; and,
 - ☐ Student given an opportunity to respond.
- ☐ **EXCEPTION: Emergency Situation:**
 - ☐ Situation constitutes a clear and present danger to the life, safety, or health of students or school personnel.
 - ☐ If student suspended w/o conference per this provision, both parent and student notified of student's right to a conference and right to return to school for the purpose of the conference.
 - ☐ Conference held as soon as the student is physically able to return to school for the conference.

6. **Timing Restrictions**

- No student may be suspended from school for more than 20 school days in one school year.

Exception: For purposes of readjustment, student enrolls in/is transferred to another regular school, opportunity school/class, or continuation education school, student may be suspended for up to 30 days.

- The Governing Board may suspend a student attending a continuation school/class for up to the remainder of the semester.
- **NOTE:** Timelines vary for students with disabilities, discussed below.

STUDENTS WITH DISABILITIES

1. General Considerations.

- *Application:* Student, not yet eligible, but concerns raised about need for special education in discipline process; OR, "change in placement" for already eligible student.
- Discipline is change in placement.
- Consider FAPE, LRE, and Student's IEP.
- Balance:
 - Appropriate services to students with disabilities, including those disabilities that may produce behavior problems.
 - Enable school administrators to maintain discipline and order in the school setting.

2. Involuntary Change in Placement (Short Term)

Convene Manifestation Determination if: *(check all that apply)*

- ☐ Student has been removed from placement for more than 10 consecutive days;
OR,
- ☐ Series of discrete removals that constitute a pattern /case-by-case determination *(check all that apply)* (**TIP:** Administrator to document days student removed from school, conduct, whether SPED services provided):
- ☐ Series of removals total more than 10 days in a school year; AND
- ☐ Child's behavior is substantially similar to behavior in previous incidents that resulted in removal; AND
- ☐ Consider additional factors such as the length of each removal, the amount of time the child has been removed, proximity of the removals to one another.
- ☐ Other change in placement.
- ☐ *None of the above, Manifestation Determination not required.*

3. Manifestation Determination (MD)

- ☐ Convene within 10 school days of decision to change the placement of a child with a disability due to violation of a code of conduct.
- ☐ Develop plan for serving the student while MD is pending.

TIP: *If days have already been used up by prior discipline removals, the 10 days in which it is not necessary to provide services may have already been used while the Student was out of school.*

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ATTENDEES:

- ☐ LEA designee;
- ☐ Relevant members of IEP team (*check all that apply*); and,
 - ☐ Someone who can provide an accurate summary of the findings of the discipline administrator;
 - ☐ Teachers with experience with the student in regular education setting;
 - ☐ Persons / Experts knowledgeable about the evaluations and its implications for behavior in the education setting;
 - ☐ Parents informed of right to bring individuals knowledgeable or with special expertise.
- ☐ Parent/guardian. Provide with:
 - ☐ Notice of procedural safeguards;
 - ☐ Notice of the possible IEP meeting; and,
 - ☐ Notice of regular education disciplinary proceeding, if any.

PROCESS:

- ☐ Student has been removed from placement for more than 10 days, total. *If yes, 11th day services required.*
- ☐ Review all relevant information in the student's file, including IEP, teacher observations, relevant information provided by the parents.
 - ☐ History of student's disability and why qualified for SPED;
 - ☐ Educational and cognitive testing results;
 - ☐ Student's discipline history;
 - ☐ Behavior in class based on teacher reports; and,
 - ☐ Student's involvement in the specific incident under consideration.

DETERMINATION:

☐ Conduct in question was *caused by or had a direct and substantial relationship to the child's disability*?

- ☐ YES, student returned to prior placement.
 - ☐ Conduct a functional behavioral assessment (FBA);
 - ☐ Implement a behavioral intervention plan;
 - ☐ Modify an existing behavioral intervention plan.

EXCEPTIONS:

- ☐ Student and District agree to alternative placement in BIP;
- ☐ Student is in interim placement for zero tolerance offense;
or,
- ☐ Court order.
- ☐ NO, District may proceed with discipline.
 - ☐ District may consider "unique circumstances on a case-by-case basis" when deciding whether change of placement is necessary (ex. IAES);
 - ☐ If change in placement over 10 consecutive school days, must provide FBA and behavioral intervention services as appropriate.

☐ Conduct in question was the direct result of the District's failure to implement the IEP? (Note: failure to *implement* NOT failure to provide FAPE)

- ☐ YES, student returned to prior placement.
- ☐ NO, District may proceed with discipline.

TIP: Record should reflect team went through both factors, whether consensus was reached, and the basis for the disagreement. If no consensus is reached, Parents should be reminded of options they have to challenge the decision and this should be in the notes as well.

4. **District's Knowledge / Lack of Knowledge of Disability** (NOTE: *If the District does not have knowledge of a disability, IDEA protections do not apply.*)

- ☐ **No knowledge if:**
- ☐ Parent refused to allow evaluation;
 - ☐ Parent refused services; or,
 - ☐ Student already assessed, with finding of no disability.
- ☐ **Knowledge if:**
- ☐ Parent expressed concern in writing;
 - ☐ Parent requested initial assessment;
 - ☐ School personnel expressed specific concerns:
 - ☐ Identified pattern of behavior that may indicate disability; and,
 - ☐ Expressed to Special education director or other supervisor.

5. **45-day Removal to IAES (Special Circumstances)**

- ☐ Student committed one of the following offenses:
- ☐ Student carried or possessed a weapon to or at school, on school premises, or to or at a school function;
 - ☐ Student knowingly possessed or used illegal drugs, or sold or solicited the sale of a controlled substance, while at school, on school premises, or at a school function; OR,
 - ☐ Student inflicted serious bodily injury upon another person while at school, on school premises; or at a school function.
- ☐ Ensure IEP services available in IAES.
- ☐ District may also request hearing to place in IAES if:
- ☐ District believes maintaining current placement is substantially likely to result in injury to the child or others.
- ☐ IAES must allow Student to continue to process on IEP goals and access general curriculum.

6. **Section 504 Students**

Applying procedural safeguards to ensure compliance with Federal law, including convening 504 team meeting before any significant change in placement.

Expulsion Hearing Script

I would like to announce the convening of the Administrative Hearing on the proposed expulsion of _____ on _____, at _____ PM at the Office of Education.

This hearing is being heard before the Trinity County Office of Education Board of Trustees. The Board will hear facts, ask clarifying questions and make findings. A decision by this Board to recommend expulsion must be supported by substantial evidence. If the Board does not expel, proceeding stops at this level, and the student is allowed to continue enrollment in the school.

I would like to remind the school and student and/or parent of their rights to make opening and closing statements and to present oral and documentary evidence, including witnesses. You also have the right to question all witnesses who may testify at this hearing and to examine and ask questions about all other evidence presented.

My name is _____. I will be acting as chairperson of this hearing. I am not an attorney; however, I will be ruling on any objections to evidence made during this hearing. I will not rule until each side has had an opportunity to express their position on the objection. Now I would like everyone here to tell us your name and your role in this hearing, starting with the parent/guardian and student.

Before we begin, let me ask the school representative(s) and the student and/or parent(s) (and any witnesses, if present) to raise your right hand. Do you swear or affirm that what you are about to say or present is the truth, the whole truth, and nothing but the truth?

It is Affirmed.

If either side would like to make an opening statement, they may do so now, beginning with the school representative and followed by the student and/or parent(s). If not, we will begin the hearing with the presentation of evidence by the school representative. When the school's presentation has concluded, I will allow the pupil and his/her parent(s) representative ask questions about the school's presentation. I will then allow panel members to ask questions pertaining to the school's presentation of evidence. Following this, the pupil and his/her parent(s) representative will present evidence and information on the pupil's behalf.

Thank you all for your cooperation here today. This hearing is adjourned.

At this time, I will ask both the school representative and the parent/student to exit the room while the board deliberates this case. Thank you.

Reconvene to Open Session

The board has voted to _____ student # 2021-22-01 by the vote of _____.

Trustee(s)