

*Department of Student Services*

# DISCIPLINE HANDBOOK



## **IRVINE UNIFIED SCHOOL DISTRICT**

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# Discipline

## Table of Contents

TITLE	PAGE
Table of Contents.....	ii
Suspension/Expulsion/Involuntary Transfer Chart.....	4
Suspension & Expulsion Chart.....	5
Education Codes.....	6
In Locus Parentis.....	11
Alternatives to Suspension .....	12
Suspensions .....	14
Referral and Expulsion Packet Check List .....	14
Suspension Procedures .....	15
Interviewing Accused Students in Discipline Cases .....	15
Interviewing Student Witnesses.....	16
Parent Notification .....	16
Search & Seizure.....	18
Notification of Law Enforcement – Ed. Code 48902.....	19
Duty Concerning Conduct of Pupils – Ed. Code 44807 .....	19
Teacher Suspensions – Ed. Code 48910 .....	19
Maximum Days of Suspension – Ed. Code 48903.....	20
Aeries Discipline Codes .....	20
Suspension Appeal Procedure.....	23
Expulsions .....	24
Steps in the Student Expulsion Process.....	24
Readmission After Expulsion .....	25
Notification of Teacher – Education Code 49079.....	26
Legal Timelines .....	26
Length of Expulsion - Ed Code 48916 .....	27
Suspended Expulsion.....	27
Procedure for Revoking the Suspended Expulsion Order .....	27
Stipulated Expulsion Agreement.....	27

County Board Review of Expulsions - Ed Codes §§ 48921-48924 .....	28
Expulsion Evidence Requirements .....	29
Rules of Conduct For Administrative Hearing Panel .....	31
Considering Potential Student Expulsion Action .....	31
Expulsion and Foster Youth .....	32
Expulsion Procedures for Special Ed. & 504 Students .....	33
Basis of Knowledge.....	34
Board Policies .....	35
Board Policy 5144 - Student Conduct.....	35
Administrative Regulation 5144 – Student Conduct .....	35
Administrative Procedure 5144 – Student Conduct.....	48

## Suspension/Expulsion/Involuntary Transfer Chart

	<b>Suspension</b>	<b>Expulsion</b>	<b>Involuntary Transfer</b>
<b>Definition</b>	Short-term removal of a pupil from ongoing instruction at a school for adjustment purposes (may be used only when other means of correction fail to bring about proper conduct, except for specified offenses or safety concerns).	Long-term removal of a pupil from the school district by action of the governing board, which may suspend the expulsion with specified conditions.	Transfer of irregularly attending, truant, or disruptive pupil to a continuation school or opportunity program or community day school.
<b>Who Must Act</b>	Principals or superintendents or their designees and teachers for classroom suspensions.	Principals or superintendents or their designees and teachers for classroom suspensions. School Boards make final decision to expel or suspend expulsion.	Principal or designee for transfer to continuation school.
<b>How Long</b>	Up to 5 days per offense. May be up to 20 days per year. Balance of semester for a continuation student with Board's approval.  Teacher – remainder of day and the next day from teacher's class. Must be willing to meet with parent. May request parent/guardian to attend class with student.	Maximum: Current semester the offense occurs and the following semester.  For Mandatory Expulsion Offenses: One calendar year.	Until end of the semester following the semester during which the acts leading to the transfer occurred or as specified under required placement review.
<b>Due Process Steps</b>	<ol style="list-style-type: none"> <li>1. Conduct informal investigation. Meet with the student and ask what happened.</li> <li>2. Inform pupil of reasons for discipline and allow pupil an opportunity to explain.</li> <li>3. Contact parent/guardian and request conference.</li> </ol>	<ol style="list-style-type: none"> <li>1. Meet all required legal timelines and notifications.</li> <li>2. School Board determines whether student is expelled subsequent to administrative hearing.</li> <li>3. Deliberation is held in closed session.</li> <li>4. Pupil must be advised that he/she may appeal to the County Board of Education.</li> </ol>	<ol style="list-style-type: none"> <li>1. Pupil and parent are notified of proposed involuntary transfer in writing. Parent/pupil may request appeal with superintendent or designee.</li> <li>2. At meeting, pupil and parent are informed of facts and reasons for transfer; they may inspect documents, question witnesses, and present their own evidence.</li> <li>3. Written decision must give reasons for transfer based on EC 48900 violations, truancy, or irregular attendance and notice of any review process.</li> </ol>

## Suspension & Expulsion Chart

MANDATORY RECOMMENDATION Ed Code 48915 (c)	QUASI-MANDATORY RECOMMENDATION Ed Code 48915 (a)	DISCRETIONARY RECOMMENDATION Ed Code 48900
Act must be committed at school or at school activity off school grounds or a nexus discovered to a discretionary Ed Code.	Act must be committed at school or at school activity off school grounds or a nexus discovered to a discretionary Ed Code.	Acts are committed on or off campus, before or after school, related to school activity or school attendance.
1. Possessing, selling, or otherwise furnishing a firearm.	1. Causing serious physical injury to another person, except in self-defense.	(a)(1) Caused, attempted, or threatened physical injury.
2. Brandishing a knife at another person.	2. Possession of any knife, explosive, or other dangerous object of no reasonable use to the pupil.	(a)(2) Willfully used force or violence upon a person.
3. Unlawfully selling a controlled substance listed in Chapter 2 of the Health and Safety Code 11053.	3. Unlawful possession of any controlled substance listed in Chapter 2 of the Health and Safety Code 11053, except for the first offense for the possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis.	(b) Possessed, sold, or otherwise furnished any firearm, knife, explosive, or other dangerous object.
4. Committing or attempting to commit a sexual assault or committing sexual battery as defined in Ed Code 48900 (n).	4. Robbery or extortion.	(c) Unlawfully possessed, used, sold, furnished, or been under the influence of any controlled substance.
5. Possession of an Explosive.	5. Assault or battery, as defined in Sections 240 and 242 of the Penal code, upon any school employee.	(d) Offered, arranged, or negotiated to sell any controlled substance.
		(e) Committed or attempted to commit robbery or extortion.
Additional findings of "danger" or "other means of correction" are <u>NOT</u> required.	Additional findings of "danger" or "other means of correction" <u>are</u> required.	(f) Damage to school or private property.
		(g) Stolen or attempted to steal school or private property.
		(h) Possessed or used tobacco or tobacco products.
		(i) Obscene act or profanity or vulgarity.
		(j) Possessed, offered, arranged, or negotiated to sell drug paraphernalia.
		(k) Disrupted school activities or defiance.
		(l) Knowingly received stolen or private property.
		(m) Possessed an imitation firearm.
		(n) Sexual assault: committed or attempted.
		(o) Harassed, threatened, or intimidated a witness.
		(p) Offered, arranged, negotiated, or sold prescription drug Soma.
		(q) Engaged in, or attempted to engage in, hazing.
		(r) Engaged in an act of bullying, cyberbullying.
		(t) Aids or abets.
		Additional findings of "danger" or "other means of correction" <u>are</u> required.

# Education Codes

## GROUNDS FOR SUSPENSION OR EXPULSION

### DISCRETIONARY RECOMMENDATION – MAY RECOMMEND EXPULSION

Ed Code 48900 (a) to (r), (t), 48900.2, 48900.3, 48900.4, 48900.7

The decision to expel or suspend must be based on a finding of one or both of the following:

1. Other means of correction are not feasible or have repeatedly failed to bring about proper conduct.
2. 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 .

#### **Ed Code 48900 (s)**

*A pupil shall not be suspended or expelled for any of the acts enumerated in this section, unless that act is related to school activity or school attendance occurring within a school under the jurisdiction of the superintendent of the school district or principal or occurring within any other school district. A pupil may be suspended or expelled for acts that are enumerated in this section and related to school activity or attendance that occur at any time, including, but not limited to, any of the following:*

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

#### **Ed Code 48900 (u)**

As used in this section, “school property” includes, but is not limited to, electronic files and databases.

#### **Ed Code 48900 – SUSPENDABLE OFFENSES**

A pupil shall not be suspended from school or recommended for expulsion, unless the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has committed an act as defined pursuant to any of subdivisions (a) to (r), inclusive:

*EC 48900 (a) thru (e): Can suspend first offense.*

- (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 otherwise furnished any firearm, knife, explosive, or other dangerous object unless, in the case of possession of any object of this type, the pupil had obtained written permission to possess the item from a certificated school employee, which is concurred by the principal or the designee of the principal.
- (c)** Unlawfully possessed, used, sold, or otherwise furnished or been under the influence of, any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind.
- (d)** Unlawfully offered, arranged, or negotiated to sell any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind, and either sold, delivered or otherwise furnished to any person another liquid, substance, or material and represented the liquid, substance, or material as a controlled substance, alcoholic beverage, or intoxicant.
- (e)** Committed or attempted to commit robbery or extortion.

**EC 48900 (f) through (t): Must show *Other Means of Correction* prior to suspension.**

- (f) Caused or attempted to cause damage to school property or private property.
- (g) Stolen or attempted to steal school property or private property.
- (h) Possessed or used tobacco, or any products containing tobacco or nicotine products, including but not limited to cigarettes, cigars, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets, and betel. However, this section does not prohibit use or possession by a pupil of his or her own prescription products.
- (i) Committed an obscene act or engaged in habitual profanity or vulgarity.
- (j) Unlawful possession of, or unlawfully offered, arranged, or negotiated to sell any drug paraphernalia, as defined in Section 11014.5 of the Health and Safety Code.
- (k)(1) Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties.
- (k)(2) Except as provided in Section 48910, a pupil enrolled in kindergarten or any other 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 other grades 1 to 12, inclusive, to be recommended for expulsion. This paragraph shall become inoperative on July 1, 2018, unless a later enacted statute that becomes operative before July 1, 2018, deletes or extends that date.
- (l) Knowingly received stolen school property or private property.
- (m) Possessed an imitation firearm. As used in this section, “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.
- (n) Committed or attempted to commit a sexual assault as defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal Code or committed a sexual battery as defined in Section 243.4 of the Penal Code.
- (o) Harassed, threatened, or intimidated a pupil who is a complaining witness or witness in a school disciplinary proceeding for the purpose of either preventing that pupil from being a witness or retaliating against that pupil for being a witness or both.
- (p) Unlawfully offered, arranged to sell, negotiated to sell, or sold the prescription drug Soma.
- (q) Engaged in, or attempted to engage in, hazing. For purposes of this subdivision, “hazing” means a method of initiation or pre-initiation into a pupil organization or body, whether or not the organization or body is officially recognized by an educational institution, which is likely to cause serious bodily injury or personal degradation or disgrace resulting in physical or mental harm to a former, current, or prospective pupil. For purposes of this subdivision, “hazing” does not include athletic events or school-sanctioned events.
- (r) Engaged in an act of bullying, including, but not limited to, bullying committed by means of an electronic act, as defined in subdivisions (f) and (g) of Section 32261, directed specifically toward a pupil or school personnel.
- (t) A pupil who aids or abets, as defined in Section 31 of the Penal Code, the infliction or attempted infliction of physical injury to another person may be subject to suspension, but not expulsion, pursuant to this section, except that a pupil who has been adjudged by a juvenile court to have committed, as an aider and abettor, a crime of physical violence in which the victim suffered great bodily injury or serious bodily injury shall be subject to discipline pursuant to subdivision (a).

**ADDITIONAL SUSPENDABLE/EXPELLABLE OFFENSES**

**48900.2** In addition to the reasons specified in Section 48900, a pupil may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has committed sexual harassment as defined in Section 212.5.

**Section 212.5:** “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 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.

For the purposes of this chapter, the conduct described in Section 212.5 must be considered by a reasonable person of the same gender as the victim to be sufficiently severe or pervasive to have a negative impact upon the individual's academic performance or to create an intimidating, hostile, or offensive educational environment. **This section shall not apply to pupils enrolled in kindergarten and grades 1 to 3, inclusive.**

**48900.3 Hate Violence:** In addition to the reasons set forth in Sections 48900 and 48900.2, a pupil in any grades 4 to 12, inclusive, may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has caused, attempted to cause, threatened to cause, or participated in an act of, hate violence, as defined in subdivision (e) of Section 233.

**48900.4 Additional grounds for suspension or expulsion; harassment, threats, or intimidation:** *In addition to the grounds specified in Sections 48900 and 48900.2, a pupil enrolled in any **grades 4 to 12, inclusive**, may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has intentionally engaged in harassment, threats, or intimidation, directed against school district personnel or pupils, that is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting class work, creating substantial disorder, and invading the rights of either school personnel or pupils by creating an intimidating or hostile educational environment.*

**48900.7 Additional grounds for suspension or expulsion; terroristic threats against school officials, school property, or both**

- (a) In addition to the reasons specific in Sections 48900, 48900.2, 48900.3, and 48900.4, a pupil may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has made terroristic threats against school officials or school property, or both.
- (b) For the purposes of this section, "terroristic threat" shall include any statement, whether written or oral, by a person who willfully threatens to commit a crime which will result in death, great bodily injury to another person, or property damage in excess of one thousand dollars (\$1,000), with the specific intent that the statement is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, or for the protection of school district property, or the personal property of the person threatened or his or her immediate family.

## **ALTERNATIVES TO SUSPENSION**

**48900 (v)** A superintendent of the school district or principal may use his or her discretion to provide alternatives to suspension or expulsion, including but not limited to, counseling and an anger management program, for a pupil subject to discipline under this section.

**48900 (w)** It is the intent of the Legislature that alternatives to suspension or expulsion be imposed against a pupil who is truant, tardy, or otherwise absent from school activities.

**48900.5 (a)** Suspension, including supervised suspension as described in Section 48911.1, shall be imposed only when other means of correction fail to bring about proper conduct. A school district may document the other means of correction used and place that documentation in the pupil's record, which may be accessed



pursuant to Section 49069. However, a pupil, including an individual with exceptional needs, as defined in Section 56026, may be suspended, subject to Section 1415 of Title 20 of the United States Code, for any of the reasons enumerated in Section 48900 upon a first offense, if the principal or superintendent of schools determines that the pupil violated subdivision (a), (b), (c), (d), or (e) of Section 48900 or that the pupil's presence causes a danger to persons.

**(b)** Other means of correction include, but are not limited to, the following:

- (1) A conference between school personnel, the pupil's parent or guardian, and the pupil.
- (2) Referrals to the school counselor, psychologist, social worker, child welfare attendance personnel, or other school support service personnel for case management and counseling.
- (3) 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 pupil and his or her parents.
- (4) 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 (29 U.S.C. Sec. 794(a)).
- (5) Enrollment in a program for teaching prosocial behavior or anger management.
- (6) Participation in a restorative justice program.
- (7) A positive behavior support approach with tiered interventions that occur during the schoolday on campus.
- (8) After-school programs that address specific behavioral issues or expose pupils to positive activities and behaviors, including, but not limited to, those operated in collaboration with local parent and community groups.
- (9) Any of the alternatives described in Section 48900.6.

*(Amended by Stats. 2012, Ch. 425, Sec. 3. Effective January 1, 2013.)*

**48900.6** As part of or instead of disciplinary action prescribed by this article, the school may require a pupil to perform community service on school grounds, or, with written permission of a parent or guardian of the pupil, off school grounds, during the pupil's non-school hours. For the purposes of this section, "community service" may include, but is not limited to, work performed in the community or on school grounds in the areas of outdoor beautification, community or campus betterment, and teacher, peer, or youth assistance programs.

**QUASI-MANDATORY RECOMMENDATION – SHALL RECOMMEND EXPULSION UNLESS PARTICULAR CIRCUMSTANCES RENDER INAPPROPRIATE - 48915 (a)**

NOTE: Ed Code 48915 violations must be committed at school or at a school activity on or off campus to apply.

- (a) (1) Except as provided in subdivisions (c) and (e), the principal or the superintendent of schools shall recommend the expulsion of a pupil for any of the following acts committed at school or at a school activity off school grounds, unless the principal or superintendent determines that expulsion should not be recommended under the circumstances or that an alternative means of correction would address the conduct:
  - (A) Causing serious physical injury to another person, except in self-defense.
  - (B) Possession of any knife or other dangerous object of no reasonable use to the pupil.
  - (C) 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 either of the following:

(i) The first offense for the possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis.

(ii) The possession of over-the-counter medication for use by the pupil for medical purposes or medication prescribed for the pupil by a physician.

(D) Robbery or extortion.

(E) Assault or battery, as defined in Sections 240 and 242 of the Penal Code, upon any school employee.

- (a)(2) If the principal or the superintendent of schools makes a determination as described in paragraph (1), he or she is encouraged to do so as quickly as possible to ensure that the pupil does not lose instructional time.
- (b) Upon recommendation by the principal or the superintendent of schools, or by a hearing officer or administrative panel appointed pursuant to subdivision (d) of Section 48918, the governing board of a school district may order a pupil expelled upon finding that the pupil committed an act listed in paragraph (1) of subdivision (a) or in subdivision (a), (b), (c), (d), or (e) of Section 48900. A decision to expel a pupil for any of those acts shall be based on a finding of one or both of the following:
- (1) Other means of correction are not feasible or have repeatedly failed to bring about proper conduct.
  - (2) 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.

The decision to expel or suspend for 48900 or 48915 (a) findings must be based on a finding of one or both of the following:

1. Other means of correction are not feasible or have repeatedly failed to bring about proper conduct.
2. 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.

**MANDATORY RECOMMENDATION – SHALL RECOMMEND EXPULSION – 48915 (c)**

**No Findings Required**

The principal or superintendent of schools shall immediately suspend, pursuant to Section 48911, and shall recommend expulsion of a pupil that he or she determines has committed any of the following acts at school or at a school activity off school grounds:

1. Possessing, selling, or otherwise furnishing a firearm. This subdivision does not apply to an act of possessing a firearm if the pupil had 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. This subdivision applies to an act of possessing a firearm only if the possession is verified by an employee of a school district. The act of possessing an imitation firearm, as defined in subdivision (m) of Section 48900, is not an offense for which suspension or expulsion is mandatory pursuant to this subdivision and subdivision (d), but it is an offense for which suspension, or expulsion pursuant to subdivision (e), may be imposed.
2. Brandishing a knife at another person.
3. Unlawfully selling a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.
4. 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.
5. Possession of an explosive.

(c) The governing board shall order a pupil expelled upon finding that the pupil committed an act listed in subdivision

- (c), and shall refer that pupil to a program of study that meets all of the following conditions:
- (1) Is appropriately prepared to accommodate pupils who exhibit discipline problems.
  - (2) Is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school.
  - (3) Is not housed at the school site attended by the pupil at the time of suspension.
- (d) Upon recommendation by the principal, superintendent of schools, or by a hearing officer or administrative panel appointed pursuant to subdivision (d) of Section 48918, the governing board may order a pupil expelled upon finding that the pupil, at school or at a school activity off of school grounds violated subdivision (f), (g), (h), (i), (j), (k), (l), or (m) of Section 48900, or Section 48900.2, 48900.3, or 48900.4, and either of the following:
- (1) That other means of correction are not feasible or have repeatedly failed to bring about proper conduct.
- (e) That due to the nature of the violation, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.
- (f) The governing board shall refer a pupil who has been expelled pursuant to subdivision (b) or (e) to a program of study that meets all of the conditions specified in subdivision (d). Notwithstanding this subdivision, with respect to a pupil expelled pursuant to subdivision (e), if the county superintendent of schools certifies that an alternative program of study is not available at a site away from a comprehensive middle, junior, or senior high school, or an elementary school, and that the only option for placement is at another comprehensive middle, junior, or senior high school, or another elementary school, the pupil may be referred to a program of study that is provided at a comprehensive middle, junior, or senior high school, or at an elementary school.
- (g) As used in this section, “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 3½ inches, a folding knife with a blade that locks into place, or a razor with an unguarded blade.
- (h) As used in this section, the term “explosive” means “destructive device” as described in Section 921 of Title 18 of the United States Code.
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## In Locus Parentis

**Education Code 44807:** Every teacher in the public schools shall hold pupils to a strict account for their conduct on the way to and from school, on the playgrounds, or during recess. A teacher, vice principal, principal, or any other certificated employee of a school district, shall not be subject to criminal prosecution or criminal penalties for the exercise, during the performance of his duties, of the same degree of physical control over a pupil that a parent would be legally privileged to exercise but which in no event shall exceed the amount of physical control reasonably necessary to maintain order, protect property, or protect the health and safety of pupils, or to maintain proper and appropriate conditions conducive to learning. The provisions of this section are in addition to and do not supersede the provisions of Section 49000.

# Alternatives to Suspension

## Other Means of Correction and Alternatives to Suspension

### **First Offenses**

An offender's first violation of the §48900 a-r should not result in a suspension, unless the student has violated a section or sections of §48900 a-e and the principal or his designee deems that the student's continued presence on campus constitutes a danger to the student or others, or school property, or would interrupt the educational process (§48900.5).

### **Other Means of Correction - EDUCATION CODE 48900.5**

(a) Suspension, including supervised suspension as described in Section 48911.1, shall be imposed only when other means of correction fail to bring about proper conduct. A school district may document the other means of correction used and place that documentation in the pupil's record, which may be accessed pursuant to Section 49069. However, a pupil, including an individual with exceptional needs, as defined in Section 56026, may be suspended, subject to Section 1415 of Title 20 of the United States Code, for any of the reasons enumerated in Section 48900 upon a first offense, if the principal or superintendent of schools determines that the pupil violated subdivision (a), (b), (c), (d), or (e) of Section 48900 or that the pupil's presence causes a danger to persons.

(b) Other means of correction include, but are not limited to, the following:

(1) A conference between school personnel, the pupil's parent or guardian, and the pupil.

(2) Referrals to the school counselor, psychologist, social worker, child welfare attendance personnel, or other school support service personnel for case management and counseling.

(3) 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 pupil and his or her parents.

(4) 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 (29 U.S.C. SEC. 794(a)).

(5) Enrollment in a program for teaching prosocial behavior or anger management.

(6) Participation in a restorative justice program.

(7) A positive behavior support approach with tiered interventions that occur during the school-day on campus.

(8) After-school programs that address specific behavioral issues or expose pupils to positive activities and behaviors, including, but not limited to, those operated in collaboration with local parent and community groups.

(9) Any of the alternatives described in Section 48900.6.

(Amended by Stats. 2012, Ch. 425, Sec. 3.)

### ***Alternatives to Suspension***

The district is committed to the use of interventions and alternative forms of suspension before suspending a student found to be violation of education codes §48900a-r; §48900.2, .3, .5, .7; §48915 (a) 1-5; (c)1-5. These include but are not limited to the following:

- Counseling programs, intervention programs such as Tobacco and Drug and Alcohol Programs(see forms at the end of this section of your notebook)
- Parent conferences
- Behavior Contracts
- Mentoring Programs
- PBIS Strategies
- Behavior Review Committee
- Credit Recovery Programs
- Anger Management Programs
- Detentions
- Saturday School
- Community Service\*
- Administrative Transfer
- Teacher Imposed Suspension from class
- Parents' Attendance in Class
- Referral to SST (Student Study Team)
- Referral to SARB
- Peer Counseling Program
- Home Visit
- Shortened Schedule
- Extended Day
- Time-Out
- Continuation or Community Day School Referral

### ***Community Service***

\*California Education Code §48900.6 allows for the school to require a student to perform community service on, or off school grounds; off-campus community service requires a parents' permission slip. Community service may include, but is not limited to , work performed in the community, or on school grounds in the areas of outdoor beautification, community or campus betterment, and teacher, peer, or youth assistance programs.

This does not apply for students who have been suspended, pending expulsion, pursuant to section §48915, unless the expulsion is suspended, or not enforced by stipulation or other administrative action.

# Suspensions

## Referral & Checklist

- Advise Site Administrator (Principal)
- Notify law enforcement if: assault with a deadly weapon, possession or sale of a controlled substance, possession of a firearm, possession of a dangerous object; sexual assault/battery. If possible, a school official should be present to take notes during law enforcement interview. Follow **ALL** applicable laws.
- Conduct administrative search, if applicable.
- Secure any evidence in a confidential manner.
- Photograph the evidence alongside a ruler before the police take it into custody (injury, dangerous object, drug/paraphernalia, and vandalism).
- Conduct all interviews separately with an administrator and at least one other school official present asap. Take detailed notes. Ensure the following are addressed: Who, What, When, Where, Why, and How the incident occurred.
- Obtain written statements addressing each party's account of the incident. All statements should be written in pen, signed, and dated. School officials should **NOT** write on the statements.
- Contact the parents of the accused student and advise of student status: incident, citation, arrest, suspension, as applicable.
- Contact Child Protective Services Agency in matters of sexual assault or sexual battery (for victim and accused student) if reasonable suspicion of child abuse.
- Contact Student Services for expulsion recommendation.
- Consider student's behavioral history and previous interventions focusing on the last 2 years. Contact pervious school for additional information, if necessary.
- Date of Suspension \_\_\_\_\_
- If student is arrested prior to suspension, parent should be instructed to bring student back to school upon their release, at which time the student will be suspended. If not arrested, the student is suspended (up to 5 days) upon the completion of the above mentioned interviews. **Do not suspend in absentia. Student must be provided due process.**
- Special Ed or 504 (Conduct Manifestation Determination, if applicable, within 10 days of incident).
- If incident was determined to not be a manifestation of student's disability, immediately move forward with pre-expulsion conference.
- Conduct pre-expulsion conference with parent, student, and the school official who will present case at the hearing.
  - Explain detailed reason for expulsion recommendation including Ed Code violations?
  - Provide opportunity for accused (and parent(s)) to respond to allegations
  - Take detailed notes (dates, times, and who said what)
  - Provide and explain applicable policies and administrative regulations to parent/guardian
- Review above information with principal. Only the principal can make an expulsion recommendation.
  - If principal decision is to move forward with expulsion recommendation, contact Student Services.

### **EXPULSION PACKET CHECKLIST:**

- Suspension Notice
- Expulsion Referral Notification
- Expulsion Recommendation (by the principal)
- Administrator's Statement
- Student Statement
- Witness Statement(s)
- Evidence (pictures if any)
- School Code of Conduct or Ticket to Registration
- Schedule pre-expulsion conference with Student Services \* (**Contact Student Services**)
  - If interpreter needed, inform Student Services of language needed

At any point during this process, please contact Student Services for assistance at (949)936-5171.

# Suspension Procedures

1. Informal conference or meeting with student. You may want to include the school employee who referred the student at this meeting. The principal or his/her designee shall conduct this meeting. Education Code § 48911 (b) and (c). An SRO maybe present and participate in the meeting.
2. At the conference, the principal or the principal's designee or the superintendent shall advise the student of the reason for the disciplinary action and the evidence against him/her and the student shall be given the opportunity to present his/her version of the facts and evidence. Education Code § 48911 (b).
3. If the student is suspended without a conference prior to suspension, both the parent and student must be notified of the student's right to conference and the student's right to return to school for a conference. The conference must be held within two school days, unless the student waives this right or physically unable to attend for any reason. Education Code § 48911 (c). Always meet and conference when possible. Only suspend without conference if the student's presence on campus would represent a threat and there is ample evidence to support the suspension.
4. At the time of suspension a school employee must make a reasonable effort to contact the parent or guardian in person or by telephone. Education Code § 48911 (d).
5. Written notice of the suspension must be sent to the parent. Education Code § 48911 (d). It is recommended that the written notice include the following:
  - a. A statement of facts leading to the decision to suspend.
  - b. The date and the time the student will be allowed to return to school.
  - c. A statement of the right of the parents to view the student's records.
6. If the school district requests that the parents attend a meeting with school officials to discuss the student's behavior, they shall respond to such a request without delay. Education Code § 48911 (f).
  - a. However, the student may not be penalized if the parent fails to attend a scheduled conference. Education Code § 48911 (f).
  - b. In addition, reinstatement of the student may not be made contingent on parents' attendance at a conference. Education Code § 48911 (f).

## Interviewing Accused Students in Discipline Cases

1. Inform the student that he or she has been accused of violation of a specific education code(s) and that the consequence could be suspension and/or expulsion if verified.
2. Inform the student that the school has not made any decision, but is investigating and that he or she will be accorded all due process.
3. Inform the student that the investigation is confidential and will only be shared on a need to know basis, or during a disciplinary hearing should one be convened.
4. Inform the student that he or she has a right to make a voluntary statement regarding the incident *without interruption*. Ask the student to write a voluntary statement and sign and date it.
5. Conduct the administrative interview after the oral and written statements are completed.
6. Do not ask leading questions.
7. Determine whether or not the student has a relationship in the present or in the past with any of the accusers, or witnesses.
8. Determine whether or not the accused has any documentation of the incident. e.g. Cell phone pictures or videos, written notes, recordings, or can identify other witnesses or violators.
9. Review the student discipline file.
10. Do not counsel the student about this/her role in the alleged act during the interview. Simply gather information and confirm or show lack of corroboration.
11. Be sure to have the student sign and date his or her statement. If the student refuses to sign or give a statement, record that on the appropriate student statement sheet and sign your name next to the box that says, "Student does not desire to make a statement"

## Interviewing Student Witnesses

1. Inform the student that he or she has not been accused of violation.
2. Inform the student that the school has not made any decision but is investigating and that you are interested in hearing his or her point of view of what occurred.
3. Inform the student that the investigation is confidential and will only be shared on a need-to-know basis, or during a disciplinary hearing, should one be convened.\*see number10
4. Inform the student that you would like them to make a *voluntary* statement regarding the incident without interruption. Ask the student to write a voluntary statement and sign and date it.
5. Conduct an administrative interview after the oral and written statements are completed.
6. Do not ask leading questions.
7. Determine whether or not the witness has a relationship to the interviewed accused student presently or in the past.
8. Determine whether or not the accused has any documentation of the incident. e.g. Cell phone pictures or videos, written notes, recordings, or can identify other witnesses or violators.
9. Do not counsel the student or take a side during the interview. Simply gather information and confirm or show lack of corroboration.
10. Be sure to have the student sign and date his or her statement. If the student expresses fear or concern about having his or her name known, or appearing as a witness, have the student check the box on the witness statement that says "Due to unreasonable risk of physical or psychological harm, I am requesting to remain anonymous." This must be based on a reasonable fear of retribution or danger that the student can articulate. No general "I just don't want to" kinds of statements are acceptable.

## Parent Notification

Parents must be notified in a reasonable amount of time of the suspension of a student through every reasonable means available. If efforts to contact the parent fail, the student may still be suspended. A parent conference must be offered. If the parent fails to attend the conference, the student shall be admitted back to school and not subject to any consequence for the parents' failure to attend the conference or respond to correspondence or phone messages. Education Code §48911 (d) If the student is taken into police custody, the principal or school official must notify the parents immediately of the release to police authorities and provide the location of the destination to which the student is conveyed. The school shall also provide the police with the contact information of the student's parents/guardians, including addresses and telephone numbers. These provisions do not apply in cases of suspected child abuse, as defined in Section 11165.6 of the Penal Code, or pursuant to Section 305 of the Welfare and Institution Code. If you have any questions as to notification procedures check with Student Services. If a pupil is a foster child, the district superintendent or the district superintendent's designee must also invite the pupil's attorney and an appropriate representative of the county child welfare agency to participate in the meeting where the extension of suspension is being discussed.

In addition, if a foster child is an individual with exceptional needs and the educational agency has proposed a change in placement due to an act for which a decision to recommend the expulsion is at the discretion of the principal, the attorney for the individual with exceptional needs and an appropriate representative of the county

## Search & Seizure

Laws on Search and Seizure are constantly evolving. Search and Seizure procedures are not black and white. The key is **reasonableness**. Look at the totality of the circumstances.

- Searches by school officials must be reasonable.
- Search must be justified at inception and be reasonably related in scope to initial reason for search.
- Reasonable means there are specific, articulable facts to justify a search.



- Reasonableness may be determined by existing school policies, consent, or exigency.

**What is a Search?** An intrusion or invasion of a person's justifiable or reasonable expectation of privacy constitutes a search.

**What is Not a Search?** If an item is left where it might be openly observed (in plain view), and the observer legitimately occupies a point where the item can be observed, there is no reasonable expectation of privacy with respect to the item and the item may be seized without a search.

School administrators may search students if they have a **reasonable suspicion** that a student has violated or is violating either the law or the rules of the school. Indiscriminate searches of students' personal belongings or the students themselves threaten their privacy rights. **Essentially, a student search must be justified from the outset and limited in its scope to finding evidence related to the alleged violation of school rules or illegal conduct that justified the search in the first place.** Administrators may only search an individual student, his/her property, or district property under his/her control when there is a reasonable and individualized suspicion that the search will uncover evidence that he/she is violating the law, Board policy, administrative regulation, or other rules of the district or the school. Reasonable suspicion must be based on specific and objective facts that the search will produce evidence related to the particular alleged violation. Curiosity, rumor, hunch, mere disruptive activity, attempts to shield private possession from view, or invocations of a student's constitutional rights cannot form the basis for said reasonable suspicion. Searches may not be conducted to find evidence of other students' violations of school rules.

Administrators can search a student's cell phone if they have reasonable suspicion that the student has violated the law or the rules of the school with respect to the possession or use of weapons, sale, use, or purchase of illegal drugs, cyber-bullying, cheating on exams, harassment or making threats. However, school administrators may not search a student's cell phone for violating rules regulating the possession of a cell phone at school or the use of a cell phone at school. School administrators may confiscate or seize the phone for violation of school rules regulating the possession and use of cell phones at school but may not search the cell phone unless the school administrator has information that would lead the administrator to have a reasonable suspicion that the cell phone was used to either violate the law or the rules of the school. In addition, if a school administrator has reasonable suspicion that a school rule or law has been violated and it has to do only with a specific aspect of the phone, only that part of the phone can be searched. For example, if an administrator thought a student was cheating on a test by taking a picture of the test, only the student's photos could be searched. If an administrator had reasonable suspicion that a student sent a threatening message via text, then only the student's text messages could be searched; the photos nor other areas of the phone could be legally searched. In addition, you cannot do blanket searches - only in an emergency situation.

**When is Reasonable Suspicion Not Needed Prior to a Search?** There are a number of situations where a search may lawfully be conducted without probable cause and a warrant (in the non-school setting) or without reasonable suspicion (in the school setting). Two of the most pertinent to public school officials are:

1. Consent to the search
2. Routine administrative inspection/search.

#### ***Strip and Pat Down Searches***

- Strip searches of students are disallowed in California under Ed. Code 49050; but rule does not affect admissibility of evidence in juvenile or criminal proceedings. (E.C. 49051)
- Pat down searches of students are allowed where reasonable suspicion of contraband exists. (Safford USD v. Redding (2009) 129 S. Ct. 2633)
- But, pat down searches at a high school graduation or prom, without individualized reasonable suspicion, are unreasonably intrusive. (Herrera v. Santa Fe Public Schools, et al., 2011 WL 2433050 (U.S. Dist. Ct., New Mexico))

# Notification of Law Enforcement – Ed. Code 48902

**48902.** (a) The principal of a school or the principal's designee shall, prior to the suspension or expulsion of any pupil, notify the appropriate law enforcement authorities of the county or city in which the school is situated, of any acts of the pupil that may violate Section 245 of the Penal **Code**.

(b) The principal of a school or the principal's designee shall, within one school day after suspension or expulsion of any pupil, notify, by telephone or any other appropriate method chosen by the school, the appropriate law enforcement authorities of the county or the school district in which the school is situated of any acts of the pupils that may violate subdivision (c) or (d) of Section 48900.

(c) Notwithstanding subdivision (b), the principal of a school or the principal's designee shall notify the appropriate law enforcement authorities of the county or city in which the school is located of any acts of a pupil that may involve the possession or sale of narcotics or of a controlled substance or a violation of Section 626.9 or 626.10 of the Penal **Code**. The principal of a school or the principal's designee shall report any act specified in paragraph (1) or (5) of subdivision (c) of Section 48915 committed by a pupil or non-pupil on a school site to the city police or county sheriff with jurisdiction over the school and the school security department or the school police department, as applicable.

(d) A principal, the principal's designee, or any other person reporting a known or suspected act described in subdivision (a) or (b) is not civilly or criminally liable as a result of making any report authorized by this article unless it can be proven that a false report was made and that the person knew the report was false or the report was made with reckless disregard for the truth or falsity of the report.

(e) The willful failure to make any report required by this section is an infraction punishable by a fine to be paid by the principal or principal's designee who is responsible for the failure of not more than five hundred dollars (\$500).

(f) The principal of a school or the principal's designee reporting a criminal act committed by a school age individual with exceptional needs, as defined in Section 56026, shall ensure that copies of the special **education** and disciplinary records of the pupil are transmitted, as described in paragraph (9) of subsection (k) of Section 1415 of Title 20 of the United States **Code**, for consideration by the appropriate authorities to whom he or she reports the criminal act. Any copies of the pupil's special **education** and disciplinary records may be transmitted only to the extent permissible under the federal Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Sec. 1232g et seq.).

**Penal Code 245.** (a) (1) Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm or by any means of force likely to produce great bodily injury shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both the fine and imprisonment.

(2) Any person who commits an assault upon the person of another with a firearm shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not less than six month and not exceeding one year, or by both a fine not exceeding ten thousand dollars (\$10,000) and imprisonment.

(3) Any person who commits an assault upon the person of another with a machinegun, as defined in Section 12200, or an assault weapon, as defined in Section 12276 or 12276.1, or a .50 BMG rifle, as defined in Section 12278, shall be punished by imprisonment in the state prison for 4, 8, or 12 years.

(b) Any person who commits an assault upon the person of another with a semiautomatic firearm shall be punished by imprisonment in the state prison for three, six, or nine years.

(c) Any person who commits an assault with a deadly weapon or instrument, other than a firearm, or by any means likely to produce great bodily injury upon the person of a peace officer or firefighter, and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for three, four, or five years.

(d)(1) Any person who commits an assault with a firearm upon the person of a peace officer or firefighter, and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for four, six, or eight years.

(2) Any person who commits an assault upon the person of a peace officer or firefighter with a semiautomatic firearm

and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for five, seven, or nine years.

(2) Any person who commits an assault with a machinegun, as defined in Section 12200, or an assault weapon, as defined in Section 12276 or 12276.1, or a .50 BMG rifle, as defined in Section 12278, upon the person of a peace officer or firefighter, and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for 6, 9, or 12 years.

(d) When a person is convicted of a violation of this section in a case involving use of a deadly weapon or instrument or firearm, and the weapon or instrument or firearm is owned by that person, the court shall order that the weapon or instrument or firearm be deemed a nuisance, and it shall be confiscated and disposed of in the manner provided by Section 12028.

(e) As used in this section, "peace officer" refers to any person designated as a peace officer in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2

#### ***Penal Code 415.1: Disturbing the Peace (Fighting in a Public Place)***

PC 415.1: Any of the following persons shall be punished by imprisonment in the county jail for a period of not more than 90 days, a fine of not more than four hundred dollars (\$400), or both such imprisonment and fine:

- (1) Any person who unlawfully fights in a public place or challenges another person in a public place to fight.
- (2) Any person who maliciously and willfully disturbs another person by loud and unreasonable noise.
- (3) Any person who uses offensive words in a public place which are inherently likely to provoke an immediate violent reaction.

## **Duty Concerning Conduct of Pupils – Ed. Code 44807**

Every teacher in the public schools shall hold pupils to a strict account for their conduct on the way to and from school, on the playgrounds, or during recess. A teacher, vice principal, principal, or any other certificated employee of a school district, shall not be subject to criminal prosecution or criminal penalties for the exercise, during the performance of his duties, of the same degree of physical control reasonable necessary to maintain order, protect property, or protect the health and safety of pupils, or to maintain proper and appropriate conditions conducive to learning. The provisions of this section are in addition to and do not supersede the provisions of Section 48900.

## **Teacher Suspensions – Ed. Code 48910**

### **Ed Code 48910 (a)**

A teacher may suspend any pupil from the teacher's class:

- for any of the acts enumerated in Section 48900.
- for the day of the suspension and the day following.
- and shall immediately report the suspension to the principal of the school.
- and send the pupil to the principal or the principal's designee for appropriate action.
- and if that action requires the continued presence of the pupil at the school site, the pupil shall be under appropriate supervision, as defined in policies and related regulations adopted by the governing board of the school district.
- and as soon as possible, the teacher shall ask the parent or guardian of the pupil to attend a parent- teacher conference regarding the suspension. Whenever practical, a school counselor or a school psychologist shall attend the conference. A school administrator shall attend the conference if the teacher or the parent or guardian so requests.
- and the pupil shall not be returned to the class from which he/she was suspended, during the period of the suspension, without the concurrence of the teacher of the class and the principal.

**Ed Code 48910 (b):** A pupil suspended from a class shall not be placed in another regular class during the period of suspension. However, if the pupil is assigned to more than one class per day, this subdivision shall apply only to other regular classes scheduled, at the same time as the class from which the pupil was suspended.

**Ed Code 48910 (c):** A teacher may also refer a pupil, for any of the acts enumerated in Section 48900, to the principal or the designee of the principal for consideration of a suspension from the school.

## Maximum Days of Suspension – Ed. Code 48903

Maximum days of suspension: 5 per incident. 20 per school year, unless a pupil enrolls or is transferred to another regular school, opportunity school or class, or continuation school or class, in which case it is 30.

## Aeries Discipline Codes

AERIES CODE	ED. CODE	DESCRIPTION
01	§48900(a)(1)	Caused, attempted to cause, or threatened to cause physical injury to another person.
02	§48900(a)(2)	Willfully used force or violence upon the person of another, except in self-defense.
0B	§48900(b)	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 pupil had obtained written permission to possess the item from a certificated school employee, which is concurred in by the principal or the designee of the principal.
0C	§48900(c)	Unlawfully possessed, used, sold, or otherwise furnished, or been under the influence of, any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind.
0D	§48900(d)	Unlawfully offered, arranged, or negotiated to sell any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind, and then either sold, delivered, or otherwise furnished to any person another liquid, substance, or material and represented the liquid, substance, or material as a controlled substance, alcoholic beverage, or intoxicant.
0E	§48900(e)	Committed or attempted to commit robbery or extortion.
0F	§48900(f)	Caused or attempted to cause damage to school property or private property.
0G	§48900(g)	Stolen or attempted to steal school property or private property.
0H	§48900(h)	Possessed or used tobacco, or any products containing tobacco or nicotine products, including, but not limited to, cigarettes, cigars, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets, and betel. However, this section does not prohibit use or possession by a pupil of his or her own prescription products.
0I	§48900(i)	Committed an obscene act or engaged in habitual profanity or vulgarity.
0J	§48900(j)	Unlawfully possessed or unlawfully offered, arranged, or negotiated to sell any drug paraphernalia, as defined in Section 11014.5 of the Health and Safety Code.
0K	§48900(k)	Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties.
0L	§48900(l)	Knowingly received stolen school property or private property.
0M	§48900(m)	Possessed an imitation firearm. As used in this section, "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.

ON	§48900(n)	Committed or attempted to commit a sexual assault as defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal Code or committed a sexual battery as defined in Section 243.4 of the Penal Code.
OO	§48900(o)	Harassed, threatened, or intimidated a pupil who is a complaining witness or witness in a school disciplinary proceeding for the purpose of either preventing that pupil from being a witness or retaliating against that pupil for being a witness, or both.
OP	§48900(p)	Unlawfully offered, arranged to sell, negotiated to sell, or sold the prescription drug Soma.
OQ	§48900(q)	Engaged in, or attempted to engage in, hazing as defined in E.C. 32050. For purposes of this subdivision, "hazing" means a method of initiation or preinitiation into a pupil organization or body, whether or not the organization or body is officially recognized by an educational institution, which is likely to cause serious bodily injury or personal degradation or disgrace resulting in physical or mental harm to a former, current, or prospective pupil. For purposes of this subdivision, "hazing" does not include athletic events or school-sanctioned events.
OR	§48900(r)	Engaged in an act of bullying, including, but not limited to, bullying committed by means of an electronic act, as defined in subdivisions (f) and (g) of Section 32261, directed specifically toward a pupil or school personnel.
	§48900(s)	A pupil shall not be suspended or expelled for any of the acts enumerated in this section, unless that act is related to school activity or school attendance occurring within a school under the jurisdiction of the superintendent of the school district or principal or occurring within any other school district. A pupil may be suspended or expelled for acts that are enumerated in this section and related to school activity or attendance that occur at any time, including, but not limited to, any of the following:  <b>(1)</b> While on school grounds. <b>(2)</b> While going to or coming from school. <b>(3)</b> During the lunch period whether on or off the campus. <b>(4)</b> During, or while going to or coming from, a school sponsored activity.
OT	§48900(t)	A pupil who aids or abets, as defined in Section 31 of the Penal Code, the infliction or attempted infliction of physical injury to another person may suffer suspension, but not expulsion, pursuant to the provisions of this section, except that a pupil who has been adjudged by a juvenile court to have committed, as an aider and abettor, a crime of physical violence in which the victim suffered great bodily injury or serious bodily injury shall be subject to discipline pursuant to subdivision (a).
OS	§48900(u)	As used in this section, "school property" includes, but is not limited to, electronic files and databases.
	§48900(v)	A superintendent of the school district or principal may use his or her discretion to provide alternatives to suspension or expulsion, including, but not limited to, counseling and an anger management program, for a pupil subject to discipline under this section.
	§48900(w)	It is the intent of the Legislature that alternatives to suspension or expulsion be imposed against any pupil who is truant, tardy, or otherwise absent from school activities.
2	§48900.2	Committed sexual harassment as defined in Section 212.5. (Grades 4-12)
3	§48900.3	Caused, attempted to cause, threatened to cause, or participated in an act of, hate violence, as defined in subdivision (e) of Section 233. (Grades 4-12)
4	§48900.4	Intentionally engaged in harassment, threats, or intimidation, directed against school district personnel or pupils, 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 either school personnel or pupils by creating an intimidating or hostile educational environment.

7	§48900.7	Made terroristic threats against school officials or school property, or both.
A1	§48915(a)(1)	Causing serious physical injury to another person, except in self-defense.
A2	§48915(a)(2)	Possession of any knife or other dangerous object of no reasonable use to the pupil.
A3	§48915(a)(3)	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 the possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis.
A4	§48915(a)(4)	Robbery or extortion.
A5	§48915(a)(5)	Assault or battery, as defined in Sections 240 and 242 of the Penal Code, upon any school employee.
C1	§48915(c)(1)	Possessing, selling, or otherwise furnishing a firearm. This subdivision does not apply to an act of possessing a firearm if the 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. This subdivision applies to an act of possessing a firearm only if the possession is verified by an employee of a school district.
C2	§48915(c)(2)	Brandishing a knife at another person.
C3	§48915(c)(3)	Unlawfully selling a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.
C4	§48915(c)(4)	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.
C5	§48915(c)(5)	Possession of an explosive.

## Suspension Appeal Procedure

At the time of meeting between the parent and the principal's designee regarding the suspension, if the parents say they do not agree with the suspension, have them schedule a meeting with the principal to lodge their complaint/appeal with him/her. If they still want to appeal the suspension after meeting with the principal, have parents complete the appeal form and contact Student Services Office for assistance in the process: 949-936- 5171. Their appeal must be submitted in writing using the attached form, which is completed by the parent and/or student. The completed form must be received by Student Services no later than three weeks after the date of the meeting with the principal or principal's designee.

The Coordinator will review the materials submitted by the parent and/or student to determine whether or not the suspension should be upheld, overruled, and/or expunged after a period of time. If the appeal has substance, the Coordinator will meet with the Director of Elementary or Secondary Education to consider the appeal. The Assistant Superintendent of Educational Services will review any decision in favor of the parents before a final decision is communicated to the principal or the parents.

A copy of the decision will be mailed to the student/parent and school principal informing them of the decision.

**NOTE:** The reasons for overruling a school's decision to suspend a student would be based upon denial of due process to the student and/or parent; the suspension is contrary to education code, or action contrary to district policy:

- \_\_\_\_\_ the student never had the chance to address the charges;
- \_\_\_\_\_ witnesses were not interviewed;
- \_\_\_\_\_ parents were not provided a copy of the suspension notice within specified timelines;
- \_\_\_\_\_ a parent conference was not held, offered, or arranged;
- \_\_\_\_\_ parents were told erroneous information about suspension or appeal possibilities.

# Expulsions

## Steps in the Student Expulsion Process

### ***Step 1: Report of Misconduct***

- Determine jurisdiction.
- Determine who will investigate.

### ***Step 2: Investigation of Misconduct***

- Interview all/selected witnesses.
- Collect witness statements using Sworn Declaration forms (if age appropriate).
- Determine whether police should be notified.
- Conduct necessary search for additional evidence.
- Interview of accused: Interview must include reasons for proposed action/evidence against him/her and opportunity to present his/her version of events. Give due process. (Ed. Code 48911(b)) (Except in emergencies – See subsection (c))
- Collection of statement(s) from accused using Sworn Declaration form (if age appropriate)

### ***Step 3: Determine Jurisdiction***

- Education Code 48900 (s) applies to all 48900 violations.
- For an Education Code 48915, the incident must have occurred on campus.
- Discipline for verbal behaviors, including expressions through electronic acts, must demonstrate that the student behavior is related to school activity or attendance and then look to see if the off-campus speech causes or is foreseeably likely to cause a substantial and material disruption on an individual or group to school activities. Speech that is threatening or dangerous to the safety of students or staff is often found to be a substantial disruption. If unsure, contact the Office of Student Services before disciplining students for off-campus speech as the school must balance the student's free speech rights with the need to take discipline.

### ***Step 4: Identify Charges and Prepare Suspension Notice***

- Identify ALL possible charges (Ed. Code 48900 et seq.).
- Prepare suspension notice and notify parent of suspension verbally and in writing (Ed. Code 48911(d)).

### ***Step 5: Determination on Recommending Expulsion***

- Determine whether offense is a "mandatory" expulsion offense.
- Site administration determines to move forward with expulsion or not.
- Contact Office of Student Services and provide required information.
- Schedule "extension of suspension meeting" (Ed. Code 48911(g)). Student Services will provide written notification in writing.
- Explore options of a stipulated expulsion.

### ***Step 6: Notification of Expulsion***

- Written notice of recommendation of expulsion and date of expulsion hearing sent by Student Services.
- Prepare expulsion packet (Student Services will work with administrator to complete, however it is the administrator's ultimate responsibility for the contents of the expulsion packet).

### ***Step 7: Preparing for Expulsion Hearing***

- Arrange for all necessary witnesses to appear and testify at hearing.
- Keep in mind expulsion cannot be based solely on hearsay testimony.
- Prepare witnesses for testimony; prepare draft of script for questions to be asked.
- Prepare opening and closing statement for hearing.
- Make special arrangements required under law for any expulsion hearings involving sexual assault/battery.

### ***Step 8: Holding the Expulsion Hearing***

- Administrator (prosecutor) makes opening statement outlining why student should be expelled and what the evidence will demonstrate.
- Administrator goes through expulsion packet and explains relevance of each document and the Chairperson follows the remainder of the script.
- Panel retires into closed session to deliberate (no other person is permitted into closed session). Under very special circumstances, legal counsel may be permitted.

### ***Step 9: Findings of Fact***

- The panel fills out the Findings of Fact worksheet.
- Findings of Fact should be detailed and based solely on evidence presented at the hearing.
- A recommended Plan of Rehabilitation is developed.

### ***Step 10: Final Approval***

- If expulsion is recommended, the Governing Board makes final determination.
- The Plan of Rehabilitation is issued at the time of the expulsion order and may, but is not limited to, periodic review during the expulsion period and assessment at the time of readmission.

## **Readmission After Expulsion**

1. On the date set by the Governing 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 the plan were met. School regulations shall be reviewed and the student and parent/guardian shall indicate their willingness to comply with these regulations.
3. If the readmission is granted, the superintendent or designee shall notify the student and parent/guardian, by registered mail or in person, of the superintendent/designee decision regarding readmission.
4. If the superintendent or designee denies the readmission of a student, the superintendent or designee 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)
5. The superintendent or designee 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 superintendent or designee determination of the educational program which the superintendent or designee has chosen. The student shall enroll in that program unless the parent/guardian chooses to enroll the student in another school district.

## Notification of Teacher – Education Code 49079

A school district shall inform the teacher of each pupil who has engaged in, or is reasonably suspected to have engaged in, any of the acts described in Section 48900, except subdivision (h) of Section 48900 or in Section 48900.2, 48900.3, 48900.4, or 48900.7. Such information shall be provided to teachers based upon any records the district maintains in the ordinary course of business or receives from a law enforcement agency.

No school district employee or officer shall be civilly or criminally liable for information provided pursuant to this section unless the person providing the information knew the information was false or the information was made with a reckless disregard for the truth or falsity of the information provided.

An officer or employee of a school district who fails to provide information about a pupil, as required, is guilty of a misdemeanor, which is punishable by confinement in the county jail for a period not to exceed six months, or a fine not to exceed one thousand dollars (\$1,000), or both.

The reporting period for providing this information is from the three previous school years and the current school year.

Any information received by a teacher pursuant to this section shall be received in confidence for the limited purpose for which it was provided and shall not be further disseminated by the teachers.

## Legal Timelines

Student violates Education Code 48900 or 48915.

- Student is suspended for **5 days**. [Site Responsibility](#).
- Meeting to extend the suspension must occur during the original **5 day suspension** period. [Site Responsibility](#).
- For Special Education students, a **Manifestation Determination IEP** must be held and it must be determined that the student's behavior was not a manifest of the student's handicapping condition and that the student was appropriately placed when the offense occurred. [Site and Special Education Responsibility](#).
- Written Notice of Administration Hearing must occur at least **10 Calendar Days** prior to the date of the hearing. [Student Services Responsibility](#).
- The Administrative Hearing must occur no more than **30 School Days** after the date of the incident. [Student Services Responsibility](#).
- The entire process may not take more than **40 School Days** total.
- The student is entitled to one **30 Calendar Day** extension. The District may request a **5 School Day** delay for a "good cause."
- Student has **30 Calendar Days** to appeal the School Board's decision to the County Board of Education.
- The County Board of Education has **20 Schools Days** to hear the Appeal.
- The County Board must give a final decision after their hearing no more than **3 School Days** after the hearing.

## Length of Expulsion - Ed Code 48916:

- ❖ An expulsion order shall remain in effect until the governing board orders the readmission of the pupil.

*For Ed Code 48900 & 48915(a) Violations:*

- ❖ At the time an expulsion of a pupil is ordered for an act other than those described in subdivision (c) of Section 48915, the governing board shall set a date **not later than the last day of the semester following the semester in which the expulsion occurred**, when the pupil shall be reviewed for readmission.

*For Ed Code 48915(c) Violations:*

- ❖ For a pupil who has been expelled pursuant to subdivision (c) of Section 48915, the governing board shall set a date of **one year from the date the expulsion occurred**. The Governing Board may set an earlier date for readmission on a case-by-case basis.

*Ed Code 48916.1:*

- ❖ At the time an expulsion of a pupil is ordered, the school district shall ensure that an education program is provided to the pupil who is subject to the expulsion order for the period of the expulsion.

## Suspended Expulsion

*Ed Code 48917:*

- Upon voting to expel a pupil, the governing board may suspend the enforcement of the expulsion order for a period of not more than one calendar year and may, as a condition of the suspension of enforcement, assign the pupil to a school, class, or program that is deemed appropriate for the rehabilitation of the pupil.
- During the period of the suspension of the expulsion order, the pupil is deemed to be on probationary status.
- May revoke the suspension of an expulsion order under this section if the pupil commits any of the acts enumerated in Section 48900. When the governing board revokes the suspension of an expulsion order, a pupil may be expelled under the terms of the original expulsion order.

## Procedure for Revoking the Suspended Expulsion Order

1. Conduct due process conference with student and parents.
2. Document the incident, your investigation findings, and the due process conference.
3. Contact the Coordinator of Student Services and send required documentation.
4. Coordinator of Student Services composes and mails official letter to the family.

## Stipulated Expulsion Agreement

A stipulated Expulsion Agreement is an agreement that the family and district mutually enter into instead of proceeding to an expulsion hearing. To be eligible for a Stipulated Agreement, the student must admit guilt to the Education Codes he/she is charged with and waives all rights to an appeal of the expulsion at the county level.

## County Board Review of Expulsions - Ed Codes §§ 48921-48924

### What is Reviewed?

“The county board of education shall determine the appeal from a pupil expulsion upon the record of the hearing before the district governing board, together with such applicable documentation or regulations as may be ordered.”

### What Standards Are Applied?

The review “shall be limited to the following questions:”

- (1) Whether the board acted without or in **excess of its jurisdiction**. This “includes, but is not limited to:”
  - a) When the hearing does not start within the required time periods;
  - b) Where an expulsion order is not based upon the acts enumerated in the Education Code; or
  - c) When the acts are not related to school activity or attendance.
- (2) Whether there was a **fair hearing**.
- (3) Whether there was a **prejudicial abuse of discretion** in the hearing. “An abuse of discretion is established in any of the following situations:”
  - a) If school officials have not met the procedural requirements of the Education Code; or
  - b) If the decision to expel a pupil is not supported by the findings prescribed by Education Code section 48915; or
  - c) If the findings are not supported by the evidence.

**BUT**, the county board may not reverse the decision based upon a finding of an abuse of discretion unless it “also determines that the abuse of discretion was prejudicial.”

- (4) Whether there is **other relevant and material evidence** which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the governing board.

### What Can the County Board Do?

Under the Education Code, “the decision of the county board shall be limited as follows:”

- 1) Where the county board finds that relevant and material evidence exists which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the governing board, it may either:
  - a) Remand the matter to the governing board for reconsideration and may in addition order the pupil reinstated pending such reconsideration; or
  - b) Grant a hearing de novo upon reasonable notice thereof to the pupil and to the governing board.
- 2) “**In all other cases**, the county board shall enter an order either affirming or reversing the decision of the governing board.”

### What is the Effect of the County Board Decision?

“The decision of the county board of education shall be final and binding upon the pupil and upon the governing board of the school district.”

## Expulsion Evidence Requirements

### In General

The decision that the student committed a violation of the Education Code, and the decision to expel, “**shall be supported by substantial evidence.**” [Education Code §§ 48918(f) and 48918(h)]

Technical rules of evidence do not apply BUT, with one exception, “**no decision to expel shall be based solely upon hearsay evidence.**” [Education Code §§ 48918(f)]

Education Code 48918(h): Relevant evidence may be admitted and given probative effect only if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Evidence is relevant when it has any tendency in reason to make the fact that it is offered to prove or disprove either more or less probable.

### What are the Forms of Evidence?

1. **Real:** Real evidence is a thing the existence or characteristics of which are relevant and material. It is usually a thing that was directly involved in some event in the case, e.g., the actual weapon.
2. **Demonstrative:** Evidence that demonstrates or illustrates the testimony of a witness, e.g., maps, diagrams of the scene of an occurrence, animations, or photographs.
3. **Documentary:** Any documents.
4. **Testimonial:** Testimony of the parties or witnesses – the testifying person must have personal knowledge, remember the incident/facts, and be able to communicate his/her personal knowledge of the incident/facts.

### What is “Hearsay”?

Hearsay evidence is evidence of a statement that was made other than by a witness while testifying at the hearing in question and that is offered to prove the truth of the matter stated.

### Caution Regarding Hearsay

Because hearsay is not an easy rule to grasp or follow, even for lawyers and judges, if there is any concern that your case is based solely on hearsay, we recommend review of the issue with counsel. The following general information regarding hearsay may assist in addressing the issue.

Stated another way, you cannot prove your case solely with written or oral statements that are made somewhere other than at the hearing. For written statements, with one exception, this is true even if the written statement is under oath.

### Checklist for the Use of Hearsay

\_\_\_\_\_ Is it an “out-of court” statement?

\_\_\_\_\_ Is it offered to prove the truth of the statement?

\_\_\_\_\_ Is it offered only to prove that the statement was made, aside from the issue of its truth?

\_\_\_\_\_ Is it offered only to prove the state of mind of the person making the statement?

If statement was “out of court,” and is offered to prove its truth, do any exceptions to the hearsay rule apply?

\_\_\_\_\_ **Admissions:** If the student admits the conduct to another person, that person can testify about the admission.

\_\_\_\_\_ **Business Records/Official Records:** Generally, prior discipline, attendance, and grade records kept in the normal course of business are admissible hearsay.

\_\_\_\_\_ **Police Reports:** Statements in a police report, based upon the officer’s own observations, are an exception to the hearsay rule.

\_\_\_\_\_ Is it “double hearsay?” If so, there must be an exception for each “layer” of hearsay.

The Education Code Exception –  
When a Decision CAN be Based SOLELY on Hearsay

Education Code section 48918(f) states:

The governing board or the hearing officer or administrative panel may, *upon finding that good cause exists*, determine that the disclosure of either the identity of a witness or the testimony of that witness at the hearing, or both, would subject the witness to an unreasonable risk of psychological or physical harm. Upon this determination, the testimony of the witness may be presented at the hearing in the form sworn declarations which shall be examined only by the governing board or the hearing officer or administrative panel. Copies of these sworn declarations, edited to delete the name and identify of the witness, shall be made available to the pupil.

**What is “Good Cause”?** A legally sufficient reason for a ruling or other action.

Warning Regarding Overuse the Education Code Exception

A few points:

- 1) Remember, the Education Code only precludes a finding based SOLELY on hearsay. Student statements which do not meet the requirements of this section are allowed to supplement non-hearsay.
- 2) Don't fall into a habit using this provision in every expulsion. There must be facts to support the conclusion that revealing the identity of the student would subject him/her to an unreasonable risk of psychological or physical harm.

Sample Declaration from Student

DECLARATION OF [STUDENT]

I, [Student Name], declare as follows:

[Specific facts of event(s), based upon first-hand knowledge, which establish or assist in establishing a violation of the Education Code].

[Specifics facts or assertions which establish that “the disclosure of either the identity of a witness or the testimony of that witness at the hearing, or both, would subject the witness to an unreasonable risk of psychological or physical harm].

I have read the declaration, and I declare under penalty of perjury that it is true and correct based upon my personal knowledge.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at Irvine, California.

Dated: \_\_\_\_\_  
[Name of Student]

Administrator Confirmation

If the facts warrant, the administrator presenting the case to the panel may be able to also render the opinion that revealing the identity of the student would subject him/her to an unreasonable risk of psychological and/or physical harm.

# Rules of Conduct For Administrative Hearing Panel

## Considering Potential Student Expulsion Action

The hearing is conducted by the Administrative Panel, whose chairperson shall preside over the meeting. The order of presentation and the time limits for presentation will be regulated by the chairperson of the panel. Ordinarily, the order of the presentation will be as follows:

### Introduction:

- a. Brief summary of the case by the chairperson.

### District:

- b. Introduction of documentary evidence by the District.
- c. \*Oral testimony of witnesses called by the District.

### Pupil:

- d. Statement on behalf of the pupil.
- e. Introduction of documentary evidence on behalf of the pupil.
- f. \*\*Oral testimony of witnesses called on behalf of the pupil.

### Closing:

- g. Closing remarks on behalf of the District.
- h. Closing remarks on behalf of the pupil.
- i. Chairperson shall declare the hearing ended and will request that all persons no longer required to present leave the hearing room.
- j. Deliberations of the Administrative Hearing Panel.

If, during such deliberations, any member of the Administrative Panel wishes to ask additional questions of any person who appeared before the panel, the chairperson may reopen the hearing and recall such person, provided the pupil, his/her parent or guardian, and his/her attorney, if any, are first given the opportunity to be present.

Following completion of its deliberations, the Administrative Panel will forward its decision and/or recommendations to the Board of Education.

When the hearing is conducted in closed session, a record of the oral proceedings, but not the Administrative Panel deliberations, shall be preserved. If a tape recorder is used, those present shall be required to give their names. The minutes of the meeting shall contain a record of all persons present at the hearing.

- \* Immediately following the direct testimony of each witness, the person representing the pupil, or the pupil, shall have an opportunity to question the witness. Thereafter, the members of the administrative panel may question the witness if they desire.
- \*\* Immediately following the testimony of each witness, the person representing the District shall have an opportunity to question the witness. Thereafter, the members of the administrative panel shall have the opportunity to question the witness if they desire.

## **Expulsion and Foster Youth**

Effective January 1, 2013, Assembly Bill (AB) 1909 added section 48918.1 to the California Education Code; brought about significant amendments to California Education Code sections 48853.5, 48911, and 48915.5; and amended Section 317 and 16010 of the Welfare and Institution Code relating to foster youth.

Under the new and amended laws, local education agencies (LEA) must notify a foster youth's county social worker and court appointed attorney if the youth is facing expulsion or is subject to a manifestation determination Individualized Education Program (IEP).

The intent of AB 1909 was to allow the foster youth's attorney and social worker to better support and advocate for foster youth at risk of expulsion.

# Expulsions:

## Special Education & 504s

- 1) When a student with a 504 plan or an active IEP is to be suspended or recommended for expulsion, the suspending administrator notifies the school psychologist.
- 2) In most cases, all special education students and students with 504 plans should be accountable to the same rules, regulations, education codes and disciplinary processes on a comprehensive campus.
- 3) When a Special Education Student or 504 Student is recommended for expulsion, a manifestation determination must take place before any expulsion disciplinary action can occur. The school psychologist needs to begin the process as soon as possible, since the pre-expulsion meeting should take place within five days for general education students and within ten days for special education/504 students.
- 4) Disciplinary removals of identified and eligible special education students that constitute a “change of placement,” e.g., more than 10 consecutive days (expulsion), or a “pattern” of removals based on the same or similar conduct (usually a series of short suspensions totaling more than 10 days) require a manifestation determination IEP to be conducted no later than 10 school days following the date on which the decision to impose the discipline resulting in a change of placement is made.
  - a. Relevant members of the IEP teams, including parent(s), review all relevant information, including IEP, assessments, disciplinary documentation, etc. To decide whether:
    - i. The conduct was caused by, or had a direct and substantial relationship to, the student’s disability; or
    - ii. The conduct was the direct result of the school’s failure to implement the IEP.
  - b. If the answer to either of those two questions is in the affirmative, then the conduct is a “manifestation” of the student’s disability, and the student must be returned to his/her placement (absent agreement with the parent to change placement, an “automatic” removal (see below) applies, or an order is obtained for the student’s removal). Additional requirements apply relating to conducting behavioral assessment and reviewing/modifying behavior plans.
  - c. If the answer to both questions is in the negative, then the student may be subject to disciplinary removal, including expulsion, in the same manner as a regular education student, subject to the parent’s right to request an expedited due process hearing to challenge the decision.
- 5) The IUSD 504 coordinator should be notified of all stages of disciplinary procedures regarding students with 504 plans. OCR interprets Section 504 regulations to imply a requirement to conduct a manifestation determination for 504-eligible students as well.
- 6) Students who commit certain specified offenses involving weapons, controlled substances, or serious bodily injury to others are subject to an “automatic” removal by the unilateral action of the school district to an interim alternative educational setting for up to 45 school days.
- 7) Other possible means of seeking the immediate removal of a dangerous student:
  - a. Request a due process hearing with OAH to obtain an order to remove the student to an interim alternative educational setting for 45 school days (renewable); or
  - b. Petition the civil court for a Honig injunction (option of last resort)



## Basis of Knowledge

1. A common occurrence in student expulsion cases is for the parent of a student without an IEP who is recommended for expulsion to suddenly inform the school district about his/her child's disability and need for special education services.
2. The IDEA rule in such instances is the "basis of knowledge" rule. The parent has to establish that the school district had knowledge that the student had a disability before the conduct that precipitated the disciplinary action took place. A basis of knowledge can be established by demonstrating that, prior to the conduct occurring:
  - a. The parent had expressed concern in writing to a teacher or administrator about the student needing special education and related services;
  - b. The parent had requested an evaluation; or
  - c. The student's teacher, or other staff, had expressed specific concerns about a pattern of behavior to the special education director or other supervisory personnel.
3. No basis of knowledge can be established if:
  - a. The parent has refused to permit evaluation;
  - b. The parent has refused services; or
  - c. The student has been evaluated and determined ineligible.
4. If a basis of knowledge is established, then all of the procedural protections under the IDEA apply, including the manifestation determination requirement discussed previously.
5. If no basis of knowledge is established, then the school district may proceed to discipline the student in the same way that non-disabled students are disciplined.
6. If no basis of knowledge is established, and the disciplinary action proceeds, the parent may request an expedited assessment during the pendency of the disciplinary removal. The student remains subject to discipline during the expedited evaluation. If the student is found to be eligible, then the school district is required to provide special education and related services.

# IUSD BOARD POLICIES

*Board Policy – 5144*



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## STUDENT CONDUCT – BOARD POLICY 5144

The Irvine Unified School District believes that all children should have their unique needs met, even in instances where the child has violated the rules of the District or the laws of the State. Therefore, in instances of student discipline the District will seek a mechanism of dealing with the student which extinguishes negative behavior, while continuing the education of the student. Suspension and expulsion shall be used within the above guidelines, according to the laws of California and the United States as alternatives only when the need for the safety and learning of other students outweighs the needs of the individual.

To help achieve a positive learning climate within a safe school environment, District principals shall be charged with maintaining order by making the rules and policies concerning student conduct widely available and enforcing them uniformly within the framework of the District's commitment to the uniqueness of each student.

Policy Adopted: January 12, 2010

*Board Policy – 5113*



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## STUDENT CONDUCT – ADMINISTRATIVE REGULATION 5144

### 1. STUDENT SUSPENSIONS AND EXPULSION/DUE PROCESS

#### DEFINITIONS

"Day" means a calendar day unless otherwise specifically provided. Education Code Section 48925(a))

"School day" means a day upon which the schools of the district are in session or weekdays during the summer recess. (48925(c))

"Suspension" means removal of a pupil from ongoing instruction for adjustment purposes. Suspension does not include reassignment to another program or class at the same school where the pupil will receive continuing instruction for the length of day prescribed for pupils of the same grade level, nor referral to a certificated employee designated by the principal to advise pupils, nor removal from the class for the remainder of the class period without reassignment to another class or program or sending the pupil to the principal or principal's designee which does not occur more than once every five school days. (48925(d))

"Emergency situation" means a situation determined by the principal or the principal's designee to constitute a clear and present danger to the lives, safety, or health of pupils or school personnel. (48911(c))

"Principal's designee" means an on-site administrator if one is available and if not available a certificated employee specifically designated by the principal in writing to assist with disciplinary procedures. The principal may appoint only one designee to serve at a time and the name of the designee shall be on file in the principal's office. A second person may be designated in writing by the

principal when both the principal and principal's primary designee are absent from the school site. The name of the person shall be on file in the principal's office. (48911(h))

"Expulsion" means the removal of a pupil from the immediate supervision and control or the general supervision of school personnel as those terms are used in Section 46300 of the Education Code (48925(b)).

"School property" includes, but is not limited to electronic files and databases (Education Code 48900(s)).

## 1.2 NOTICE OF REGULATIONS

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, suspension and expulsion. (Education Code 48900.1, 48980)

## 1.3 NOTICE TO LAW ENFORCEMENT AUTHORITIES

The chief administrative employee at a school shall notify the appropriate law enforcement authorities of the county or city in which the school is situated, of any acts of the student which may violate Penal Code Sections 245 (Assault with a Deadly Weapon), 626.9 (Firearms; schools, Gun-Free School Zone Act), or 626.10 (Schools; dirks, daggers, knives or razors), or Education Code Section 48900(c) (unlawfully possessed, used, sold or otherwise furnished, or been under the influence of any controlled substance, alcoholic beverage, or intoxicant of any kind) or (d) (unlawfully offered or arranged or negotiated to sell any controlled substance, an alcoholic beverage, or an intoxicant of any kind, and then either sold, delivered, or otherwise furnished to any person another liquid, substance, or material and represented the liquid, substance, or material as a controlled substance, alcoholic beverage, or intoxicant). (E.C. 48902)

## 2. SUSPENSIONS

2.1 The principal or the principal's designee may suspend a pupil from school or recommend a pupil for expulsion pursuant to Education Code Section 48900 if the principal or principal's designee determines that the pupil has committed any of the following acts:

2.1.1 Caused, attempted to cause, or threatened to cause physical injury to another person, or willfully used force or violence upon the person of another, except in self-defense. (E.C. 48900 (a))

A student who aids or abets the infliction or attempted infliction of physical injury on another person, as defined in Penal Code 31, may be suspended, but not expelled. However, a student may be suspended or expelled pursuant to Education Code 48900(a) once he/she has been adjudged by a juvenile court to have committed, as an aider or abettor, a crime of physical violence in which the victim suffered great or serious bodily injury. (Education Code 48900(q)).

2.1.2 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. (E.C. 48900(b))

2.1.3 Unlawfully possessed, used, sold, or otherwise furnished, or been under the influence of any controlled substance listed in Health and Safety Code 11053 et seq., alcoholic beverage, or intoxicant of any kind. (E.C. 48900(c))

2.1.4 Unlawfully offered, arranged or negotiated to sell any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or intoxicant of any kind, and then either sold, delivered, or otherwise furnished to any person another liquid, substance, or material and represented the liquid, substance, or material as a controlled substance, alcoholic beverage, or intoxicant. (E.C. 48900(d))

2.1.5 Committed or attempted to commit robbery or extortion. (E.C.48900(e))

2.1.6 Caused or attempted to cause damage to school property or private property. (E.C. 48900(f))

2.1.7 Stolen or attempted to steal school property or private property. (E.C. 48900(g))

2.1.8 Possessed or used tobacco, or any products containing tobacco or nicotine products, including, but not limited to, cigarettes, cigars, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets, and betel. However, this section does not prohibit use or possession by a pupil of his or her own prescription products. (E.C. 48900(h))

2.1.9 Committed an obscene act or engaged in habitual profanity or vulgarity. (E.C. 48900(i))

2.1.10 Unlawfully possessed or unlawfully offered, arranged, or negotiated to sell any drug paraphernalia, as defined in Section 11014.5 of the Health and Safety Code. (E.C. 48900(j))

2.1.11 Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties. (E.C. 48900(k))

2.1.12 Knowingly received stolen school property or private property. (48900(l))

2.1.13 Possessed an imitation firearm. As used in this section, "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. (E.C. 48900(m))

2.1.14 Committed or attempted to commit a sexual assault as defined in Penal Code 261, 266c, 286, 288, 288a, or 289, or committed a sexual battery as defined in Penal Code 243.4. (E.C. 48900(n))

2.1.15 Harassed, threatened, or intimidated a student who is a complaining witness or witness in a school disciplinary proceeding for the purpose of either preventing that student from being a witness or retaliating against that student for being a witness, or both. (E.C. 48900(o))

Unlawfully offered, arranged to sell, negotiated to sell, or sold the prescription drug Soma. (Education Code 48900(p)).

2.1.16 Engaged in, or attempted to engage in, hazing as defined in Section 32050 (E.C. 48900(q)).

2.1.17 Made terrorist threats against school officials and/or school property. (Education Code 48900.7).

Students in grades 4 through 12 are also subject to suspension or recommendation for expulsion for any of the acts listed below:

2.1.18 Committed sexual harassment as defined in E.C. 212.5 (E.C. 48900.2)

2.1.19 Caused, attempted to cause, threatened to cause or participated in an act of hate violence as defined in E.C. 33032.5 (e). (E.C. 48900.3)

2.1.20 Intentionally engaged in harassment, threats or intimidation directed against district personnel or a pupil or group of pupils, that is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting class work, creating substantial disorder and invading the rights of that pupil or group of pupils by creating an intimidating or hostile educational environment (E.C. 48900.4)

2.2 The Superintendent, principal, or principal's designee may use his/her discretion to provide alternatives to suspension or expulsion for a student subject to discipline under this regulation, including, but not limited to, counseling and an anger management program (E.C. 48900(u))

2.3 A student may be suspended or expelled for any of the acts listed above if the act is related to school activity or school attendance occurring at any district school or within any other school district, including, but not limited to, the following circumstances: (E.C. 48900)

2.3.1 While on school grounds;

2.3.2 While going to or coming from school;

2.3.3 During the lunch period, whether on or off the campus; or

2.3.4 During, or while going to or coming from, a school sponsored activity.

2.4 For pupils who are truant, tardy, or otherwise absent from assigned school activities, all reasonably available alternatives to suspension or expulsion are to be implemented. (48900(v))

2.5 Suspensions From Class By Teachers (48910)

2.5.1 A teacher may suspend a pupil from class for the day of the suspension and the day following for any of the acts set forth in Section 2.1 above for the day of the suspension and the day following. The teacher must:

2.5.1.1 Immediately report the suspension to the principal or principal's designee; and

2.5.1.2 Immediately send the pupil to the principal or principal's designee; and

2.5.1.3 As soon as possible ask the parent or guardian of the pupil to attend a parent-teacher conference regarding the suspension.

2.5.2 Whenever practicable, a school counselor or school psychologist shall attend the conference.

2.5.3 At the request of the teacher or parent, a school administrator shall attend the conference.

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

2.5.5 A teacher may also refer a pupil to the principal for consideration of a suspension from school.

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

2.5.7 A teacher may provide that the parent/guardian of a student whom the teacher has removed attend a portion of a school day in his/her child's classroom. When a teacher makes this request, the principal shall send the parent/guardian a written notice that the parent/guardian's attendance is requested pursuant to law. (Education Code 48900.1)

This notice shall also:

1) Inform the parent/guardian when his/her presence is expected and by what means he/she may arrange an alternate date

2) Describe the legal protections afforded to the parent/guardian as an employee under Labor Code 230.7.

3) Ask the parent/guardian to meet with the principal after the visit and before leaving school, as required by Education Code 48900.1

## 2.6 Suspensions From School By Superintendent, Principal, or Principal's Designee (48911)

2.6.1 The principal, the principal's designee or the Superintendent may suspend a pupil from school for no more than five consecutive school days unless the suspension is extended pending an expulsion (E.C. 48900(11)).

2.6.2 The principal or principal's designee shall immediately suspend any student found at school or at a school activity to be: (E.C. 48915)

2.6.2.1 Possessing, as verified by a district employee, or selling or otherwise furnishing a firearm, unless the student had obtained prior written permission to possess the item from a certificated school employee, with the principal or designee's concurrence

2.6.2.2 Brandishing a knife, as defined in Education Code 48915(g) at another person

2.6.2.3 Unlawfully selling a controlled substance listed in Health and Safety Code 11053-11058

2.6.2.4 Committing or attempting to commit a sexual assault or committing a sexual battery as defined in item #2.1.14 above

2.6.2.5 Possessing an explosive as defined in 18 USC 921

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

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

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

2.6.6 A pupil may be suspended prior to the conference only if the principal or the principal's designee determines that an "emergency situation" exists. An "emergency situation" is a situation determined by the principal, the principal's designee or the superintendent to constitute a clear and present danger to the lives, safety or health of pupils or school personnel. If a pupil is suspended without a conference, the parent and the pupil shall be notified of the pupil's right to return to school for the purpose of a conference. The conference shall be held within two school days unless waived by the pupil or the pupil is physically unable to attend (e.g. incarceration, hospitalization). In such cases, the conference shall be held as soon as the pupil is physically able to return to school for the conference.

### 2.6.7. Notice of Suspension (48911(d))

2.6.7.1 At the time of suspension, a school employee shall make a reasonable effort to contact the pupil's parent or guardian in person or by telephone.

2.6.7.2 Whenever a pupil is suspended from school, the parent or guardian shall be notified in writing of the suspension. This notice shall state the specific offense committed by the student. (Education Code 48900.8.)

The written notice may also state the date and time when the student may return to school and, if school officials request the parent/guardian meet with school officials to discuss the causes and duration of the suspension and any other matters pertinent to the matter, the notice may add that state law requires parents/guardians respond to such requests without delay.

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

## 2.6.8 Duration of Suspension

2.6.8.1 Except as provided in Education Code Section 48911(g) (extension of suspension where an expulsion is being processed) and 48912 (suspension by the governing board), the total number of days for which a pupil may be suspended shall not exceed 20 school days in a school year. If a pupil, for adjustment purposes, is transferred to, or enrolled in, another regular school, an opportunity school or class or a continuation education school or class, the total number of school days for which the pupil may be suspended shall not exceed 30 days in any school year. (48903)

2.6.8.2 In a case where expulsion is being processed (48911(g)) by the governing board, the school district superintendent or other person designated by him or her in writing may extend the suspension until such time as the governing board has rendered a decision in the action pursuant to the provisions of Education Code Section 48918, if the superintendent or the superintendent's designee, following a meeting in which the pupil and parent are invited to participate, has determined that the presence of the pupil at the school or in an alternate school placement would cause a danger to persons or property or a threat of disrupting the instructional process. (48911(g))

2.6.8.3 If the pupil or the pupil's parent(s)/guardian(s) has requested a meeting to challenge the original suspension pursuant to Education Code Section 48914, the purpose of the above meeting shall be to decide upon the extension of the suspension order and may be held in conjunction with the meeting on the merits of the suspension. (48911(g))

2.5.6.4 The Governing Board may suspend a pupil attending a continuation school or class for not longer than the remainder of the semester during which the acts leading directly to the suspension occurred. The suspension shall meet the requirements of Education Code 48915. (E.C. 48912.5, 48915)

2.5.6.5 The Governing Board, when considering the suspension or other disciplinary action against a pupil, other than expulsion, shall conduct the hearing in closed session if a public session would lead to the giving out of information concerning a pupil other than directory information as defined in Education Code Section 49061.

2.5.6.6 The Governing Board shall notify the pupil and the pupil's parents of the intent to hold a closed session to discuss the suspension or discipline of the pupil, other than expulsion. Unless the parent or pupil, within 48 hours of the receipt of the notice, requests that the hearing be held at a public meeting, the hearing shall be conducted in closed session. If such a request is received, the meeting shall be conducted in public session, except that any discussion at the meeting, which may be in conflict with the right to privacy of any other pupil, shall be conducted in closed session. (48912)

## 2.7 Meeting With Superintendent ( E.C. 48914)

2.7.1 If suspension is ordered by a principal or the principal's designee, the pupil or pupil's parent or guardian shall have the right to request a meeting with the Superintendent or the Superintendent's designee. The meeting shall be held within three school days of the time such request is received by the Superintendent or the Superintendent's designee.

2.7.2 The superintendent or the superintendent's designee shall meet with the parent or guardian of a suspended pupil to discuss the causes, the duration, the school policy involved, and other matters pertinent to the suspension.

2.7.3. The pupil may designate a representative to be present with him or her at the meeting.

### 3. EXPULSIONS

#### 3.0 Grounds for Expulsion (48915)

A student may be expelled only by the Governing Board. The Board shall expel, as required by law, any student found to have committed certain offenses listed below under "Mandatory Recommendation and Mandatory Expulsion."

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 hearing panel, based on finding either or both of the following: (E.C. 48915(b) and (e))

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

#### 3.1 Mandatory Recommendation for Expulsion

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

- 3.1.1 Causing serious physical injury to another person, except in self-defense.
- 3.1.2 Possession of any knife as defined in E.C. 48915(g), explosive or other dangerous object of no reasonable use to the student
- 3.1.3 Unlawful possession of any controlled substance, as listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, except for the first offense for the possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis. (E.C. 48916.5)
- 3.1.4 Robbery or extortion.
- 3.1.5 Assault or battery, as defined in Penal Code 240 and 242, upon any school employee.

#### 3.2. Mandatory Recommendation and Mandatory Expulsion

The principal, Superintendent or Superintendent's designee shall recommend that the Board expel any student found at school or at a school activity to be: (E.C. 48915(c))

- 3.2.1 Possessing, as verified by a district employee, or selling or otherwise furnishing a firearm, unless the student had obtained prior written permission to possess the item from a certificated school employee, with the principal or designee's concurrence.
- 3.2.2 Brandishing a knife as defined in Education Code 48915(g) at another person.
- 3.2.3 Unlawfully selling a controlled substance listed in Health and Safety Code 11053-11058.
- 3.2.4 Committing or attempting to commit a sexual assault or committing a sexual battery as defined in item #2.1.14 under "Grounds for Suspension and Expulsion" above.
- 3.2.5 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. (E.C. 48915)

3.3 The above acts must relate to school activities or attendance but may take place at any time, including, but not limited to:

3.3.1 While on school grounds;

3.3.2 While going to or coming from school;

3.3.3 During the lunch period, whether on or off the campus;

3.3.4 During or while going to or coming from, a school sponsored activity.

3.4 For pupils who are truant, tardy, or otherwise absent from assigned school activities, all reasonable available alternatives to suspension or expulsion are to be implemented. (48900)

3.5 Expulsion of Pupils With Exceptional Needs Enrolled in Special Education Programs (E.C. 48915.5)

3.5.1 In a matter involving a pupil with previously identified exceptional needs who is currently enrolled in a special education program, the governing board may order the pupil expelled pursuant to subdivisions b or d of Section 48915 only if all of the following conditions are met:

3.5.1.1 An individualized education program team meeting is held and conducted pursuant to Article 3 (commencing with Section 56340) of Chapter 2 of Part 30;

3.5.1.2 The team determines that the misconduct was not caused by, or was not a direct manifestation of, the pupil's identified disability;

3.5.1.3 The team determines that the pupil had been appropriately placed at the time the misconduct occurred.

3.5.2 The term "pupil with previously identified exceptional needs" means a pupil who meets the requirements of Section 56026 and who, at the time the alleged misconduct occurred, was enrolled in a special education program.

3.5.3 The parent of each pupil with previously identified exceptional needs has the right to participate in the individualized education program team meeting preceding the commencement of expulsion proceedings through actual participation, representation, or a conference call. Each parent shall be notified of his or her right to participate in the meeting at least forty-eight (48) hours prior to the meeting. Unless a parent has requested a postponement, the meeting may be conducted without the parent's participation, if the notice required by this subdivision has been provided.

3.5.4 Each parent may request that the meeting be postponed for up to three (3) additional school days. In the event that a postponement has been granted, the local educational agency may extend any suspension of a pupil for the period of postponement. Otherwise, suspensions of special education students may not be extended pending expulsion, nor may an alternative school placement be assigned without the express written consent of the parent(s)/guardian(s). Honig v. Doe(1988) 98 L.Ed.2d.

3.5.5 In determining whether a pupil should be expelled, the individualized education program team shall base its decision on recent and relevant information regarding the pupil.

3.5.5.1 The term "recent", as used in this subdivision, means information that has been acquired within three (3) years of the date of the alleged misconduct.

3.5.5.2 The term "relevant information," as used in this subdivision, means all of the following:

3.5.5.2.1 A review of the pupil's school progress and behavior, if available, including, but not limited to, a review of the pupil's individualized education program, teacher progress reports and comments, school health records, and school discipline records.

3.5.5.2.2 A review of the ability of the pupil to conform his/her behavior to the prescribed standards, and a determination of the relationship, if any, between the pupil's behavior and his/her handicapping condition.

3.6 Expulsion of pupils with exceptional needs; possession of firearm, knife, explosive, or other dangerous object. (Education Code 48915.6) The restrictions and special procedures provided in Section 48915.5 for the expulsion of a pupil with exceptional needs shall not apply when the pupil possessed a firearm, knife, explosive, or other dangerous object of no reasonable use to the pupil, or the pupil committed sexual battery, at school or at a school activity off school grounds, unless, for these acts the restrictions and special procedures in Section 48915.5 are mandated under federal law, including Section 1415 of Title 20 of the United States Code.

### 3.7 Length of Expulsion (48916)

3.7.1 Upon ordering the expulsion, the Board shall set a date when the student shall be reviewed for readmission to a school within the district.

3.7.2 For a student expelled for an act listed under Section 3.2 "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.

3.7.3 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. (E.C. 48916)

3.7.4 At the time of the expulsion order, the Board shall recommend a plan for the student's rehabilitation, which may include:

1. Periodic review and assessment at the time of review for readmission.
2. Recommendations for improved academic performance, tutoring, special education assessments, job training, counseling, employment, community service and other rehabilitation programs.

Students who have been expelled for reasons relating to controlled substances or alcohol may be required to enroll in IUSD Alternative to Suspension Program, or a county/private drug rehabilitation program, designed to assist students and families who may be facing substance abuse before returning to school. (E.C. 48916.5)

### 3.8 Student's Right to Hearing (48918(a))

3.8.1 An expulsion hearing shall be held within 30 school days of the date the principal or superintendent determines the pupil has committed any of the acts enumerated in Section 48900 of the Education Code unless the pupil requests in writing that the hearing be postponed. The pupil shall be entitled to one postponement for a period of not more than 30 calendar days. Additional postponements may be granted by the governing board. In the event that compliance by the governing board with these time requirements is impracticable, the superintendent or his designee may, for good cause, extend the time period for five additional school days. The reason for the extension of the time for the hearing shall be included as part of the record at the time the expulsion hearing is conducted.

#### 3.8.2 Written Notice of the Hearing (E.C. 48918(b))

Written notice of the hearing shall be forwarded to the pupil and the pupil's parent or guardian at least 10 calendar days prior to the date of the hearing. Such notice shall include:

3.8.2.1 The date, time, and place of the hearing;

3.8.2.2 A statement of the specific facts and charges upon which the proposed expulsion is based;

3.8.2.3 A copy of the disciplinary rules of the district which relate to the alleged violation; and

3.8.2.4 Notification of the student's or parent/guardian's obligation, pursuant to E.C.

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 E.C. 48915(a) and (c).

3.8.2.5 The opportunity of the pupil or the pupil's parent or guardian to:

3.8.2.5.1 Appear in person or to employ and be represented by counsel or by a nonattorney advisor;

3.8.2.5.2 To inspect and obtain copies of all documents to be used at the hearing;

3.8.2.5.3 To confront and question all witnesses who testify at the hearing;

3.8.2.5.4 To question all other evidence presented; and

3.8.2.5.5 To present oral and documentary evidence on the pupil's behalf, including witnesses.

### 3.8.3 Conduct of Hearing

In lieu of conducting an expulsion hearing itself, the governing board may appoint an impartial administrative hearing panel of three or more certificated employees of the district, none of whom shall be on the staff of the school in which the pupil is enrolled. In lieu of the appointment of district employees exclusively, the district may request the services of one or more certificated persons not employed by the district. Such hearing shall not be conducted in conflict with any procedures established in this policy.

3.8.4 The governing board, or in the case where the governing board appoints an administrative hearing panel, the administrative panel shall conduct a hearing to consider the expulsion of a pupil in a session closed to the public unless the pupil or the pupil's parents or guardian requests, in writing at least five days prior to the date of the hearing, that the hearing be conducted at a public meeting. If such request is made of the governing board, the meeting shall be public. Whether the expulsion hearing is held in closed or public session, the Board may meet in closed session to determine if the student should be expelled. If the Board admits any other person to the closed session, the parent/guardian, the student, and the counsel of the student shall also be allowed to attend the closed session. (E.C. 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. (E.C. 48918(c))

3.8.6 Within three school days following such hearing, administrative hearing panel shall determine whether to recommend expulsion to the governing board.

3.8.7 If the decision of the administrative hearing panel is to not recommend expulsion, the expulsion proceedings shall be terminated and the pupil shall be immediately reinstated and allowed to return to a classroom instructional program, any other instructional program, a rehabilitation program or any combination of these programs. Placement in one or more of these programs shall be made by the superintendent or his designee after consultation with district personnel, including the pupil's teachers and the pupil's parent or guardian. The decision not to recommend expulsion shall be final.

3.8.8 If the hearing officer or administrative panel recommends expulsion, findings of fact in support of such recommendation shall be prepared and submitted to the governing board. All findings of fact and recommendations shall be based solely on the evidence adduced at the hearing. If the governing board accepts the recommendation calling for expulsion, such acceptance shall be based

upon either a review of the findings of fact and recommendations submitted by administrative hearing panel or upon results of any supplementary hearing conducted pursuant to this policy as the governing board may order.

3.8.9 The decision of the governing board to expel a student shall be based upon substantial evidence relevant to the charges adduced at the expulsion hearing. No evidence to expel shall be based solely upon hearsay evidence. An administrative hearing panel, or governing board, upon a finding that good cause exists, may determine that the disclosure of the identity of a witness and the testimony of the witness at the hearing would subject the witness to an unreasonable risk of psychological or physical harm. Upon this determination, the testimony of the witness may be presented at the hearing in the form of sworn declarations which shall be examined only by the governing board or the hearing officer or administrative panel. Copies of the sworn declarations which are edited in such a manner as to delete the name and identity of the witness shall be made available to the pupil.

3.8.10 A record of the hearing shall be made. Such record may be maintained by any means, including electronic recording, so long as a reasonably accurate and complete written transcription of the proceedings can be made.

3.8.11 Technical rules of evidence shall not apply to such hearing, but evidence may be admitted and given probative effect only if it is the kind of evidence upon which reasonable persons are accustomed to reply in the conduct of serious affairs. A decision of the governing board to expel shall be supported by substantial evidence showing that the pupil committed any of the acts enumerated in Section 48900 of the Education Code.

3.8.12 Whether an expulsion hearing is conducted in closed or public session by the governing board or before a hearing officer or administrative hearing panel, final action to expel a pupil shall be taken by the governing board only at a public meeting. Written notice of any decision to expel or to suspend the enforcement of an expulsion order shall be sent to the pupil or parent or guardian and shall be accompanied by notice of the right to appeal such expulsion to the county board of education within 30 days, notice of the education alternative placement to be provided to the pupil during the time of expulsion, and notice of the obligation of the parent, guardian, or pupil, upon the pupil's enrollment in a new school district, to inform that district of the pupil's expulsion.

3.8.13 A decision of the governing board whether to expel a pupil shall be made within 10 school days following the conclusion of the expulsion hearing unless the pupil requests in writing that such decision be postponed.

3.8.14 If compliance by the governing board with the time requirements for the conducting of an expulsion hearing under this subdivision is impractical due to a summer recess of governing board meetings of more than two weeks, the days during the recess period shall not be counted as schooldays in meeting the time requirements. The days not counted as schooldays in meeting the time requirements for an expulsion hearing because of a summer recess of governing board meetings shall not exceed 20 school days, as defined in subdivision (c) of Section 48295, and unless the pupil 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 school for the school year.

3.8.15 The governing board shall maintain a record of each expulsion, including the cause therefore. Records of expulsion shall be a nonprivileged, disclosable public record.

3.8.16 The expulsion order and the causes therefore shall be recorded in the pupil's mandatory interim record and shall be forwarded to any school in which the pupil subsequently enrolls upon a request from the admitting school for the pupil's school records.

### 3.9 Suspension of Expulsion (48917)

3.9.1 The governing board, upon voting to expel a pupil, may suspend the enforcement of the enforcement of the expulsion order for a period of not more than one calendar year and may, as a condition of the suspension of enforcement, assign the pupil to a school, class, or program which is deemed appropriate for the rehabilitation of the pupil. During the period of the suspension of the expulsion order, the pupil shall be deemed to be on probationary status. The suspension of an expulsion order under this section may be revoked by the governing board upon the pupil's commission of any of the acts enumerated in Section 48900 or for any violation of the district's rules and regulations governing pupil conduct.

3.9.2 When it is alleged that a pupil on probationary status pursuant to Education Code Section 48917 has committed an offense in violation of Education Code Section 48900 or the district's rules and regulations governing pupil conduct, the principal or the principal's designee shall attempt to hold a conference with the pupil and the pupil's parent or guardian. At the conference, the pupil shall be informed of the reason the principal or the principal's designee is recommending revocation of the suspension of the expulsion order and the evidence against him or her and shall be given an opportunity to present his or her version of the facts and evidence in his or her defense. In the event the pupil or the pupil's parent or guardian fails to attend the conference, the principal or the principal's designee shall consider the evidence he or she has received and may recommend revocation of the expulsion order.

3.9.3 Following the conference, the principal or the principal's designee shall either find that no offense was committed and maintain the pupil on probationary status or that an offense was committed and present his findings to the governing board to determine whether the revocation of the suspension of the expulsion order should be ordered by the governing board. Upon revocation of the suspension of an expulsion order, a pupil may be expelled under the terms of the original expulsion order.

3.9.4 Upon satisfactory completion of the rehabilitation assignment of a pupil, the pupil shall be reinstated by the governing board in a school of the district. Upon reinstatement, the governing board may also order the expungement of any or all records of the expulsion proceedings.

3.9.5 A decision of the governing board to suspend 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 of education required under Education Code Section 48919. Any appeal shall be filed within 30 days of the original vote of the governing board.

### 3.10 Readmission Procedures of Expelled Pupil

3.10.1 A copy of the readmission procedure shall be mailed to the expelled pupil and the pupil's parent or guardian at the time the expulsion order is entered.

3.10.2 The district staff shall develop a standard readmission form which expelled pupils and their parents may use to apply for readmission.

3.10.3 The form shall include the present address of the pupil, all educational programs attended by the pupil during the period of expulsion, all activities of the pupil during the period of expulsion including, but not limited to, counseling, employment, community service and/or rehabilitative programs, and other information deemed appropriate by the district staff. The form may also seek information regarding any convictions or similar dispositions of criminal charges by a court or any suspensions, expulsions or other disciplinary action taken against the pupil by another school or educational program.

3.10.4 The district staff may contact persons having contact with the pupil during the period of expulsion and report their findings to the governing board.

3.10.5 The district staff shall, within 15 school days, submit to the governing board the pupil's application for readmission along with any reports compiled by the district staff for consideration at the next regularly scheduled board meeting.

3.10.6 The governing board shall review the application and accompanying report and either grant or deny the application for readmission. If the application for readmission is granted, the district staff shall inform the pupil and the pupil's parent in writing of the school which the pupil may attend. The notice of readmission shall be sent within five school days of the governing board's decision and the pupil may enroll at any time thereafter.

3.10.7 If the application for readmission is denied, the governing board shall notify, in writing, the pupil and the pupil's parents within five school days of their right to a hearing before the governing board to review the denial of the application for readmission. Upon receipt of the parent's or pupil's request for a hearing, a hearing shall be held within 20 school days unless the parties and the district agree to a postponement. Notice of the hearing date shall be sent to the parent at least 10 days prior to the hearing.

3.10.8 If the governing board denies the readmission of an expelled pupil, the governing board shall make a determination either to continue the placement of the pupil in the alternative educational program initially selected for the pupil, but need not be limited to, serving expelled pupils, including placement in a county community school.

3.10.9 The governing board shall provide written notice to the expelled pupil and the pupil's parent or guardian describing the reasons for denying the pupil readmittance into the regular school district program. The written notice shall also include the determination of the educational program for the expelled pupil. The expelled pupil shall enroll in that educational program unless the parent or guardian of the pupil elects to enroll the pupil in another school district.

3.10.10 The hearing to review the denial of the application for readmission shall be conducted in the same manner as an expulsion hearing except that the parent and pupil shall have the burden of proof to show that the pupil should be readmitted.

3.10.11 The decision of the governing board shall be final.

#### 4. APPEAL TO COUNTY BOARD OF EDUCATION

##### 4.1 Time for Filing Appeal (48919)

4.1.1 An expelled pupil may, within 30 days following the decision of the governing board to expel, file an appeal with the county board of education.

4.1.2 The county board of education is required to hold a hearing within 20 school days of the filing of the appeal.

##### 4.2 Transcript (48919)

4.2.1 It shall be the responsibility of the pupil and the pupil's parent or guardian, at the time of filing the appeal, to request a copy of the written transcript and supporting documents from the district. The school district is required to provide the transcript, supporting documents and records within ten school days following the request.

4.2.2 The cost of the transcript shall be borne by the pupil, unless the pupil's parent or guardian certifies to the district that he/she cannot reasonably afford the cost of the transcript because of limited income or exceptional necessary expenses or both.(E.C. 48921) The cost of the district staff preparing the hearing transcript shall be charged at \$30.00 per hour.

4.2.3 It shall be the responsibility of the pupil and the pupil's parent or guardian to file the transcripts, supporting documents and records with the county board of education following transmittal of the records to the pupil and the pupil's parent or guardian.

#### 5. STUDENTS EXPELLED FROM OTHER DISTRICTS (48911.1)

5.1 The governing board realizes that students expelled from school for serious offenses represent a possible danger to the students or staff at other schools in which they may seek to enroll. In order to identify and prohibit the enrollment of any such potentially dangerous student in our district, the board shall request expulsion information from the expelling district whenever it receives an enrollment request from an individual who has been expelled. Information about any student expelled from this district shall be supplied within five (5) working days to any other district that requests it.

5.2 The board shall hold a hearing whenever it finds that the pupil seeking enrollment was expelled from another district for an act other than these described in subdivision (a) or (c) of Education Code Section 48915.

5.3 The hearing and notice shall be conducted in accordance with expulsion procedures described in Section 48918 and in administrative regulations.

5.4 Upon determining, at this hearing, whether the individual in question poses a potential danger to district students or employees, the board shall either deny enrollment for the remainder of the expulsion period, permit enrollment, or permit conditional enrollment. If the student is found not to pose a danger, he/she shall be admitted or conditionally admitted. If the enrollment is permitted, an interdistrict agreement shall be required unless the student has, since being expelled, established legal residence in the district.

Legal Reference: Educational Code

§§ 35207, 46600, 47817, 48211, 48212, 48432.5, 48900, 48900.5, 48902, 48903, 48910, 48911, 48912, 48912.5, 48913, 48914, 48915, 48916, 48917, 48918, 48919, 48925, 49061, 56026, 56340

Government Code

§ 27720



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## STUDENT CONDUCT – ADMIN PROCEDURE 5144

1. Expulsion procedures will be initiated by the principal of the school in which the pupil is enrolled. He/she will notify the Superintendent on the day of suspension, that an act has been committed by the pupil in violation of E.C. Section 48900 or 48915 which warrants expulsion.
2. The principal shall prepare the following sections of the expulsion packet as follows:
  - a. Statement of Charges
  - b. Suspension Letter
  - c. Recommendation for Expulsion
  - d. Assistant Principal's Statement, if applicable
  - e. Witness(es)' Statements
  - f. Police Report (available by District counsel from IPD)
  - g. Pupil's Transcript
  - h. Pupil's Current Class Schedule
  - i. Pupil's Current Academic Progress
  - j. Pupil's Attendance Record
  - k. Pupil's Health Record
  - l. Pupil's Citizenship Record
  - m. Certification of Record
  - n. Recommendations for Readmission
3. The Superintendent or designee shall:
  - a. advise the principal regarding legal timelines to be observed in the expulsion proceedings.
  - b. complete the expulsion packet by preparing the following sections:
    1. Cover Letter to Parents
    2. Notice of Hearing Letter
    3. Notice of Hearing Rights
    4. Applicable Education Code Sections
    5. Applicable Board Policies
    6. Letter for Suspension Extension Hearing
    7. Order Extending Suspension

8. Official Notice of Board of Education's Decision with Conditions and Procedures for Readmission, if applicable (signed by Superintendent).

- c. convene an administrative hearing panel;
- d. schedule a hearing at the earliest possible time within the legal LIMITS;
- e. communicate with the parent(s)/guardian(s), as necessary, throughout the expulsion proceedings;
- f. conduct the expulsion hearing before the administrative panel or arrange for legal counsel to conduct the hearing;
- g. present the administrative hearing panel's findings and recommendation to the Board of Education; and
- h. notify the pupil and the pupil's parent(s)/guardian(s) of the Board of Education's decision by certified letter.

Revised: July 2001