
# Suspension – Expulsion Manual

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*WITH SPECIAL THANKS TO:*

**Oakland Unified School District**
**Alameda County Board of Education**

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## Detailed Outline
(All references are to California Education Code)

## I. Suspensions & Expulsions

A. A student may not be suspended from school or recommended for expulsion unless the superintendent or principal of the school in which the pupil is enrolled determines that the student has ( § 48900 ):

a. (1) Caused, attempted to cause, or threatened to cause physical injury to another person.
(2) Willfully used force or violence upon another person, except in self-defense.
b. Possessed, sold, or otherwise furnished any firearm, knife, explosive, or dangerous object, unless the pupil had obtained written permission to possess the item from a certified school employee and concurred to 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, an alcoholic beverage, or an intoxicant of any kind.
d. Unlawfully offered, arranged, or negotiated to sell any controlled substance, and then either sold, delivered, or otherwise furnished the controlled substance, or a substance purported to be the controlled substance, to another person.
e. Committed or attempted to commit robbery or extortion.
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. This section does not prohibit use or possession by a pupil of his or her prescription products.
i. Committed an obscene act or engaged in habitual profanity or vulgarity.
j. Unlawfully possessed or unlawfully offered, arranged, or negotiated to sell any drug paraphernalia.
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.
l. Knowingly received stolen school property or private property, including electronic files and databases.
m. Possessed an imitation firearm that is so substantially similar in appearance to an actual firearm that a reasonable person would believe it is a firearm.
n. Committed or attempted to commit sexual assault or sexual battery.
o. 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 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.
r. Engaged in an act of bullying, including, but not limited to, bullying committed by means of an electronic act, directed specifically toward a pupil or school personnel.
s. Sexual Harassment:
The conduct 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. Applies only to students in $4^{th}$-$12^{th}$ grade. ( § 48900.2 )
t. Caused, attempted to cause, threatened to cause, or participated in an act of, hate violence. Applies only to students in $4^{th}$ -$12^{th}$ grades. ( § 48900.3 )
u. Intentionally engaged in harassment, threats, or intimidation, directed against school district personnel or pupils, that is sufficiently severe to have the 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. ($4^{th}$ - $12^{th}$ grades). ( §48900.4 )
v. Making terroristic threats against school officials or school property. ( §48900.7 )

B. A pupil may be suspended or expelled for acts enumerated related to school activity or school attendance that occur during, but not limited to the following times ( § 48900(s) ):

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

C. A student who aids or abets (defined by Penal Code § 31) the infliction or attempted infliction of physical injury to another person may suffer suspension, but not expulsion. This is true except when a student has been adjudged by the juvenile court to have committed, as an aider and abettor, a crime of physical violence in which the victim has suffered great bodily harm. Then, the student may be subject to suspension or expulsion. ( § 48900(t) )

D. It is the intent of the Legislature that alternatives to suspensions or expulsion be imposed against any pupil who is tardy or otherwise absent from school activities. ( § 48900(w) )

E. A superintendent or principal may use their discretion to provide alternatives to suspension or expulsion, including, but not limited to, counseling and an anger management program. ( § 48900(v) )

## II. Limits to Suspensions

A. A student cannot be suspended for more than five (5) consecutive schooldays (except in an expulsion situation). ( § 48911 (a) ). A student that is being recommended for expulsion can be suspended for more than five days **if**, and only if the school district superintendent or her designee, has determined, following a meeting in which the student and the student's parents are invited, that the student's presence at the school pending the expulsion hearing would cause a danger to a person or property or a threat of disrupting the instructional process. ( § 48911 (g) )

B. A student cannot be suspended for being tardy or truant. (§48900(v))

C. Suspension should be imposed only when other means of correction fail to bring about proper conduct. However, a student may be suspended for any of the enumerated reasons in Education Code § 48900 upon first offense, if the principal determines that the student violated subdivision (a), (b), (c), (d), or (e), of § 48900 or that the student's presence causes a danger to persons or property or threatens to disrupt the instructional process. ( § 48900.5 )

D. Except in an expulsion situation, the total number of days for which a pupil may be suspended from school shall not exceed 20 schooldays in any school year, unless the pupil transfers for the purposes of adjustment (in which case the total number of days shall not exceed 30 schooldays). ( § 48903 )

## III. Suspension Procedures

A. *Definition of suspension*: Removal of a student from ongoing instruction for adjustment purposes. Suspension does not include reassignment to another class or removal from a class for the remainder of the period. ( § 48925(d) )

B. A teacher, principal, or superintendent may suspend a student for any of the reasons enumerated in § 48900. A teacher may only suspend a student for two days. ( §§ 48910(a), 48911(a) )

C. Suspension by the principal or principal's designee shall be preceded by an informal conference conducted by the principal (or designee). ( § 48911(b) )

1. At the conference, student shall be informed of the reason for disciplinary action and shall be given an opportunity to present her version and evidence in her defense.
2. A student can be suspended without a conference if an "emergency situation" exists. ( § 48911(c) )
3. If student is suspended without conference, both the parent and the student shall be notified of the student's right to a conference. The conference shall be held within two (2) schooldays, unless the student waives the right or is physically unable to attend. ( § 48911(c) )

D. At the time of suspension, a school employee must make a reasonable effort to contact the student's parents by telephone or in person. Whenever the student is suspended from school, the parent shall be notified in writing of the suspension. ( § 48911(d) )

E. Each school district is authorized to establish a policy that permits school officials to conduct a meeting with the parent or guardian of a suspended student to discuss the causes, the duration, the school policy involved, and other matters pertinent to the suspension. ( § 48914 ) However, **a student cannot be punished for their parent not attending a meeting.** That means that it is illegal to suspend a student until their parent comes in for a meeting. ( § 48911(f) )

F. Students suspended may be assigned to supervised suspension classroom for the entire suspension period if the student poses no imminent danger or threat, or if an action to expel the student has not been initiated. ( § 48911.1(a) )

## IV. Expulsion Procedures

A. *Definition of expulsion*: Removal of a student from (1) the immediate supervision and control, or (2) the general supervision, of school personnel. ( § 48925(b) ) An expulsion means that the student cannot attend any of the regular District schools. (NOTE: Many people confuse a transfer from one school to another with an expulsion. Although a transfer should be accompanied by some level of due process, if the transfer is to an equivalent school within the school district, it is not considered an expulsion.)

B. Only the governing school board can expel a student, although the Board can appoint an administrative panel to hold the evidentiary hearing or hire a hearing officer. If the Board appoints an administrative panel that panel must consist of at least three certificated persons, none of whom are on the Board or on the staff of the school from where the student is enrolled. ( § 48918(d) )

C. The governing board of each school district shall establish rules and regulations governing procedures for the expulsion of students which shall include, but are not limited to the following ( § 48918 ):

1. The student is entitled to a hearing to determine whether she should be expelled. The hearing shall be held within 30 schooldays, after the date the principal determines the student committed any of the acts enumerated in § 48900, unless the student requests in writing that the hearing be postponed for up to 30 calendar days. If the hearing is held by a hearing officer or panel, or the board does not meet on a weekly basis, the governing board shall make its decision within 40 schooldays after the student was removed from school, unless the student requested a postponement. If compliance with the time requirements is

impracticable, the board may for good cause, extend the time period an additional five (5) schooldays. (see § 48925 for definitions of days)

2. Written notice of the expulsion hearing for a pupil shall be forwarded to the student at least ten (10) calendar days prior to the hearing. Notice shall include the date and place of hearing, statement of specific facts and charges, copy of the disciplinary rules of the district, notice of the student's and parents' obligations, notice of the opportunity for the student or parent to appeal in person and be represented by an attorney or non-attorney advocate. ( § 48918(b) ) A student can inspect and obtain copies of all documents to be used at the hearing.
3. The student/representative can question and confront witnesses who testify at the hearing. ( § 48918(b) )
4. The student/representative can question all evidence presented. ( § 48918(b) )
5. The governing board cannot just rely on hearsay, except when there is good cause that a student witness's presence would subject the witness to unreasonable risk of physical or psychological harm. In this case, the student witnesses, who do not attend the hearing, may submit signed sworn affidavits. ( § 48918(f) )
6. The student/representative can present oral and documentary evidence on behalf of student, including witnesses. ( § 48918(b) )

D. The decision of the hearing officer or panel to recommend expulsion must be made within three (3) school days. ( § 48918(e) )

## V. Rules of Evidence

A. Technical rules of evidence do not apply, but 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. ( § 48918(h) )

B. A decision by the governing board to expel has to be supported by substantial evidence that the student committed one of the enumerated acts in Section 48900. ( § 48918(h) )

C. No evidence to expel shall be based solely on hearsay ( § 48918(f) ), except:

1. Where a good cause determination is made that the disclosure of either the *identity* of a witness or the *testimony* of that witness at the hearing would subject the witness to an unreasonable risk of psychological or physical harm, the testimony of the witness may be presented in the form of **sworn declarations**. ( § 48918(f) )

John A. v. San Bernadino City Unified School District
(1982) 33 Cal.3d 301, 307-308,187 Cal.Rptr. 472
(Reasonable person in the conduct of serious affairs will not

rely solely on written statements but will demand that witnesses be produced so that their credibility may be tested and their testimony weighed against conflicting evidence when their testimony appears readily available and there is no substantial reason why their testimony may be produced.)

D. In hearings regarding sexual assault or sexual battery, evidence of specific instances of a complaining witness' prior sexual conduct is presumed inadmissible absent determination of extraordinary circumstances. ( § 48918(h) )

E. *Searches by school employees* ( § 49050 ):

1. School employees ***may not*** conduct a body cavity search of a student or remove or arrange a student's clothing to permit a visual inspection of the student's underclothing, breasts, buttocks, or genitalia.

2. The exclusionary rule does not apply to school disciplinary proceedings.

Gordon J. v. Santa Ana Unified School Dist. (1984) 162 Cal.App. 3d 530, 546, 208 Cal.Rptr. 657 (student suspended for possession of marijuana on campus even though search of student's locker was not justified on probable cause grounds and violated the student's Fourth Amendment rights).

Cf. In re William G. (1985) 40 Cal.3d 550, 221 Cal.Rptr. 118. (searches of students by public school officials must be based on a reasonable suspicion that student engaged in proscribed activity, but exclusionary rule is appropriate remedy when evidence is sought to be admitted in a juvenile or criminal prosecution.)

## VI. Mandatory Expulsions

A. *General Rule*: Most expulsion decisions by a governing board require the following six components:

1. A determination that all procedural and time requirements have been met.
2. A determination that a student had committed an offense in Education Code as a ground of expulsion. ( § 48900 (a) - (r), § 48900.2 (sexual harassment), § 48900.3 (hate violence), § 48900.4 (harassment, threats, or intimidation against a pupil or pupils), § 48900.7 (terroristic threats))
3. A determination that there is sufficient relation between the act and school attendance or a school activity. ( § 48900(s) )
4. A determination that either (1) other means of correction are not feasible or have repeatedly failed to bring about proper conduct or (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. ( § 48915(b)(1) & (2) )

5. A determination of the date that the student will be considered for readmission (i.e., the term of the expulsion). ( § 48916(a) )
6. A recommended plan for rehabilitation during the term of the expulsion and alternative placement. ( § 48916(b) )

B. *Mandatory Expulsions*: Federal and state law have additionally defined certain situations in which a governing board must order a pupil expelled if the Board finds that the pupil committed one of the following acts at school or at a school activity off school grounds ( § 48915(c) & (d) ). There are currently FIVE situations:

1. Possessing, selling, or otherwise furnishing a firearm. ( § 48915(c)(1) )
2. Brandishing a knife at another person. ( § 48915(c)(2) ) For purposes of this section a knife includes any dagger or other weapon with a fixed, sharpened blade fitted primarily for stabbing. ( § 48915(g) )
3. Unlawfully selling a controlled substance. ( § 48915(c)(3) )
4. Committing or attempting to commit a sexual assault or battery. ( § 48915(c)(4) )
5. Possession of an explosive. ( § 48915(c)(5) )

NOTE: As a matter of policy, and in order to comply with the federal Gun-Free School Zone law, the State Legislature has set forth these five situations as requiring severe immediate student discipline.

Notwithstanding this important policy statement, the only practical difference in procedures between the general rule and a mandatory expulsion is that in a mandatory expulsion situation, the governing board is not required to make the findings as to whether other means of correction have failed or the act is inherently dangerous. The governing board still needs to make all the other determinations and findings.

NOTE: "Zero Tolerance" Policies: The California Attorney General has said that a school district may not adopt its own "zero tolerance" policy which would automatically require the expulsion of students for offenses other than the mandatory expulsion offenses contained in the Education Code. ( 80 Ops. Cal. Atty. Gen. 347 ) That means that unless the student is found to have committed one of the five "zero tolerance" offences in 48915(c), the Board, in order to expel, MUST find that either other means of correction are not feasible or have failed, or that the student causes an ongoing threat to physical safety.

C. *Mandatory Recommendation.* A "mandatory expulsion" is distinguishable from a "mandatory recommendation" for expulsion. ( § 48915 )

A superintendent or principal is required to recommend for expulsion if the superintendent or principal determines that the student has committed one of the following offenses at school or at a school activity off school grounds, unless the superintendent or principal determines that expulsion is inappropriate under the particular circumstances. These offenses include:

1. Causing serious physical injury to another person, except in self-defense. ( § 48915(a)(1) )
2. Possession of any knife or other dangerous object of no reasonable use to the pupil. ( § 48915(a)(2) )
3. Unlawful possession of any controlled substance except for the first offense for the possession of not more that one avoirdupois ounce of marijuana, other than concentrated cannabis. ( § 48915(a)(3) )
4. Robbery or extortion. ( § 48915(a)(4) )
5. Assault or battery, as defined in the Penal Code, Sections 240 & 242, on any school employee. ( § 48915(a)(5) )

## VII. Terms of Expulsion

A. *General Rule*: The term of the expulsion cannot exceed the last day of the semester following the semester in which the expulsion occurred. ( § 48916(a) )

B. *Mandatory Expulsions*: The term of the expulsion is a period of one calendar year from the date of expulsion. However, the governing board may decide to set an earlier date for readmission on a case-by-case basis. ( § 48916(a) )

C. If an expulsion is ordered during *summer session* or the intersession period of a year-round program the governing board shall set a date, not later than the last day of the semester following the summer session or intersession period in which the expulsion occurred, when the pupil shall be reviewed for readmission to a district school or school the pupil last attended. ( § 48916(a) )

D. The District must provide an educational program for the student during the term of the expulsion, subject to funding. ( § 48916.1 )

## VIII. Suspended Expulsions ( § 48917 )

A. *General Rule*: 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 pupils to a school class or program that is appropriate for the rehabilitation of the pupil. During the period of suspension of enforcement, the pupil is on probationary status. The governing board may revoke the suspension of the expulsion order if the pupil commits any of the acts under § 48900 or violates any of the district's rules and regulations governing student conduct. If the pupil satisfactorily completes the

rehabilitation period, the governing board may expunge any or all records of the expulsion proceeding.

B. *Mandatory Expulsions*: The California Attorney has opined that a school district may suspend enforcement of mandatory expulsions. ( 80 Ops. Cal. Atty. Gen. 85)

## IX. Expulsion Appeals

A. If a student is expelled, the student or his or her parent or guardian, may, within *thirty (30) calendar days* following the decision of the governing board to expel, file an appeal to the county board of education. ( § 48919 )

B. Grounds for appeal are limited to the following questions ( § 48922 ):

1. Whether the governing board acted without or in excess of its jurisdiction.
2. Whether there was a fair hearing before the governing board.
3. Whether there was a prejudicial abuse of discretion in the hearing.
4. Whether there is relevant and material evidence which, in the exercise of reasonable diligence, could not have been produced or was improperly excluded at the hearing before the governing board.

## X. Discrimination in the Discipline Procedure

A. *Language*: In order to meet requirements of due process, expulsion notices and hearings should be translated for non-English speaking families.

B. *Race*: Advocates should be aware of the possibility of discriminatory discipline. If a school or district is disciplining students of one race more harshly than students of another race, a complaint can be brought to the U.S. Department of Education, Office of Civil Rights. Statistics regarding expulsions are public records and can be requested from a school district. These statistics may show a pattern with regard to discriminatory discipline.

C. *Disability*: Students with special needs have additional protections with regards to expulsions that are further described in a separate section of this manual. ( § 48915.5, Title 20 § 1415(k) of United States Code )

## TIPS FOR REPRESENTING A STUDENT IN AN EXPULSION HEARING

### I. First Steps

A. *Obtaining Documents.*

By law, you are entitled to all documents that will be used in an expulsion hearing. ( § 48918(b)(5) ) As soon as you receive a case, you should request these documents from the District. (sometimes referred to as the "expulsion packet") You will need a release from your client to get the documents. In addition to your right to see everything being used in the expulsion, parents have a general right to see everything in their child's file within five business days of making a request (Education Code §49069). You may want to get the student's whole file to help you prepare for the case.

You should review the documents carefully and then review them with your client. Look out for inconsistent witness statements and statements from students that appear to have been written by adults.

B. *Interviewing the client.*

There are several areas that are important to cover in your first interview with your client.

1. The incident.
   Review your client's version of the incident. Review the statements in the expulsion packet with your client. Find out what your client has already told school officials and if your client has already written a statement.

2. Disability.
   Find out if your client is receiving special education services or receiving accommodations under Section 504, or should be receiving such services. Students with disabilities have special protections. You should consult an attorney with expertise in this area if your client has a disability.

3. The investigation.
   One important issue at the hearing will be what kind of investigation the school did. Review with your client who was present during the incident. You may find there were many students whose statements are not included in the expulsion packet. This will be something you can raise at the hearing.

4. The process.
   It will also be important to interview your client about the process that was followed by the school. You will often find that the school did not

follow procedures. For example, you may find that the school failed to meet with the client prior to initially suspending him, or that the school automatically extended the student's suspension until the expulsion hearing, instead of having the required meeting with the parent to discuss whether the suspension would be extended beyond the initial five days. You also need to look at the notice the student received to make sure it was timely and included everything required by law. (Including a clear statement regarding the incident for which the student is being recommended for expulsion and under what part of the code.) Make sure the hearing is being held within the required timeframe. You will want to bring up any procedural violations at the expulsion hearing.

5. Possible witnesses.
You will want to review with your client any possible witnesses that might be helpful to the case and whether your client knows how to contact those witnesses.

6. Past history.
You will need information about your client's past history and whether he has ever been in trouble before. This will be relevant to whether the school can prove that "other means of correction have failed" (see *Secondary Findings* below). You will also need information on what kinds of interventions, if any, the school has tried to assist your client.

7. Mitigating factors/character witnesses.
You will need to discuss with your client what kind of evidence you can bring to the hearing that shows positive things about your client. It is helpful to bring letters of support and even better if you can bring character witnesses. It is also often helpful to have your client prepare a statement about why he wants to go back to school, including what his goals are.

C. *Gathering witnesses.*

1. Voluntary witnesses.
You will need to work closely with your client to ensure that witnesses come to the hearing. If your client does not have a phone number for a particular witness the school should provide that to you because they cannot interfere with your right to bring witnesses to the hearing.

2. Subpoenas. ( § 48918(i)(1) )
The law provides that the school board can issue subpoenas for witnesses as requested by the student. A few districts, such as Oakland, actually have a form to fill out to request a subpoena. In other districts you may have to show them the law to get them to issue the subpoena. Keep in mind that you should carefully evaluate using a subpoena. A witness who has to be subpoenaed may not be helpful to your client.

## II. The Hearing

A. *Format.*

Most expulsion hearings are heard by an administrative panel appointed by the school board. A few districts hire a hearing officer to hear expulsion hearings. In some smaller districts the board itself conducts the hearing. Regardless of who conducts the hearing, the final decision to expel must come from the board.

All expulsion hearings must be taped. ( § 48918(g) ) If you end up appealing your case you will need to request a transcript of the hearing from the school District.

Generally a hearing will begin with the District representative going over the procedures for the hearing, including the rules of evidence for the hearing and what could be the results of the hearing. The school representative and the student representative will then each make an opening statement. The school then presents its case, including all witnesses and the student's representative can cross-examine any witnesses. The student then presents his or her case, including all witnesses, and the school representative can cross-examine any witnesses. There may also be questions from the panel for witnesses on both sides. Both sides are permitted to make closing statements. (See sample hearing script from OUSD). Note that Districts vary immensely in the level of formality in their hearings. Some Districts follow a very formal structure, whereas others treat the hearing more like a meeting. If the District is not following a formal structure, you may need to remind the hearing officer of your desire to make an opening and closing statement and of your right to cross-examine all witnesses.

B. *Procedural Violations.*

Any procedural violations that have occurred should be raised at the hearing. You may need to raise these issues on your direct examination of your client or their parent and/or in your cross-examination of the school representative. In Oakland Unified School District, the panel hears procedural concerns first and then only goes on to a hearing regarding the incident if they find there have not been significant procedural violations. In any District, you should make the argument that if procedural violations have occurred the expulsion is not valid and the minor should return to school immediately.

C. *Problems with investigation.*
You will often need to spend part of the hearing proving that the incident was not appropriately investigated. This can be done very effectively in your cross-examination of the school official. You will often find that the investigation

was inadequate (for example, only a couple of students interviewed about an incident that took place in a classroom full of students).

D. *Inconsistent witness statements.*

It is very common to find that witness statements are not consistent with each other or that a witness statement is not consistent with what the witness says at the hearing. Unfortunately, many times witnesses do not attend hearings, making it difficult to use cross-examination to bring out inconsistencies. However, in these cases the failure of the school to bring witnesses is a good argument for not expelling the student and may be grounds for appeal if the student is expelled. (See below.)

E. *Evidentiary Issues.*

Technical rules of evidence do not apply to expulsion hearings, however, a student cannot be expelled solely on hearsay evidence. So, if the only evidence the school brings are witness statements, without the witnesses, that is not enough for an expulsion. However, there is one exception which is that if the testimony of a witness would expose them to "an unreasonable risk of psychological or physical harm" the testimony of that witness can be presented in the form of a sworn declaration. ( § 48918(f) ) Keep in mind, this exception is extremely overused by Districts. There must be evidence of the risk of harm. A school cannot decide not to bring witnesses because the witness prefers not to be there.

Also keep in mind that expulsion decisions are to be based on substantial evidence. ( § 48918(h) ) If your client is expelled without substantial evidence or solely on hearsay you have grounds for an appeal.

F. *Secondary findings.* ( § 48915(e) )

In all cases except zero tolerance offenses (gun possession, brandishing a knife, drug sales, possession of an explosive, and sexual assault), finding that your client committed the offense is not enough to expel. The Board must also find that either the student poses an ongoing threat to the physical safety of others, or that other means of correction are not feasible or have repeatedly failed. This is a very important area for advocacy. It allows you to advocate against expulsion, even if your client has committed an expellable offense. The board must have substantial evidence of this secondary finding, so this is often a ground for appeal if there has been no evidence of either ongoing threat or other means of correction.

G. *Student Statement.*

It is usually a good idea to have your client make a statement at the end of the hearing about why he or she wants to go back to school, future goals, etc. If

your client has not had a good academic record he or she should talk about why they think things will be different if they return. Of course, a student cannot be expelled for being a bad student, but the reality is that a student is less likely to be expelled if they can demonstrate that they take school seriously and plan to really take advantage of their opportunity to return to school.

H. *Possible Recommendations.*

After a hearing, the panel of hearing officers will make one of the following recommendations:

1. Not to Expel. ( § 48918(e) )
   If the recommendation is not to expel the process stops at this point and nothing goes before the governing board. However, the Education Code does allow for the student who is not expelled to be placed by the Superintendent or Designee in a specific program, so even if your client is not expelled he or she may be transferred to another school in the District.

2. Expulsion. ( § 48918(f) )
   The panel can recommend expulsion. If the board accepts this recommendation your client will not be able to attend any of the District schools. He or she will be able to attend some type of educational program such as a county school.

3. Suspended Expulsion. ( § 48918(j) )
   A suspended expulsion means that the student is technically and legally expelled but is being allowed to attend a District school. Since the student is technically expelled they can be taken out of school if there is another infraction without a new hearing. Suspended expulsion is a good alternative to argue for if your client has committed a zero tolerance offense but there are mitigating circumstances. Although districts must expel for zero tolerance offenses, they can give suspended expulsions. (See Attorney General's opinion in this manual, 80 Ops. Cal. Atty. Gen. 85.) However, suspended expulsion is <u>not</u> a good (or legal) outcome if there were not adequate grounds for expulsion. Those cases should be appealed, even though your client is allowed to go back to school. Keep in mind that, for purposes of appeal, a suspended expulsion is the same as an expulsion. If you wish to appeal a suspended expulsion you must do so within the timelines, you cannot wait and see if your client "makes it" under a suspended expulsion and then appeal if he or she is taken out of school for a second infraction.

## III. Appeals

A. *Board Review.* ( § 48918(j) )

If a student is recommended for expulsion by the administrative panel or hearing officer, the recommendation has to go before the school board for action. That gives your client another opportunity to advocate to not be expelled. In some cases you may want to argue that your client be given a suspended expulsion (see above). The board will not hear the evidence over again and will rely on the findings of the panel, but this can be another opportunity to bring up mitigating circumstances, character references, etc.

Different Districts have different procedures for this level of review so you should check with the District. (For example, in Oakland you can go before a specific Board committee before the Board makes a final decision.)

B. *Requesting an appeal before the County Board.*

Once an expulsion is voted on and confirmed by the School Board you can appeal to the County Board of Education. You must do so within 30 days of the expulsion order and you should do so right away so your client can return to school. ( § 48919 )

If you are appealing a case to the county you must request the transcript of the hearing. If the parent cannot afford to pay for the cost of the transcript the fee is to be waived.

There are limited grounds for appeal to the county board. In your appeal, you have to make the argument that your case falls within one of these grounds. (See County Board procedures from Alameda County, in this manual and sample brief.)

C. *Writ.*

If you are unsatisfied with the County Board's decision you have the right to take an administrative writ in court.

## IV. Post-Expulsion

A. Keep in mind that your client is entitled to an educational program even if he or she is expelled. ( § 48916.1 ) If your client is expelled you will need to advocate for a good program during the term of the expulsion.

B. Families can request that the expulsion be expunged from the student's record after he or she has finished the term of the expulsion.

C. It is very important that the student follow the "rehabilitation plan" during the term of the expulsion. He or she must attend the educational program so that he or she will be able to return to a comprehensive school. ( § 48917(e) )

## V. Issues to look out for

A. *Disability.*

If your client is in special education or has any disability that affects his or her ability to succeed in school, he or she is entitled to special protections before the school can proceed with an expulsion hearing. (See information on students with disabilities in this manual.) Always ask about special education or disabilities in your initial interview. If your client does have a disability you may want to consult with an attorney with expertise in this area.

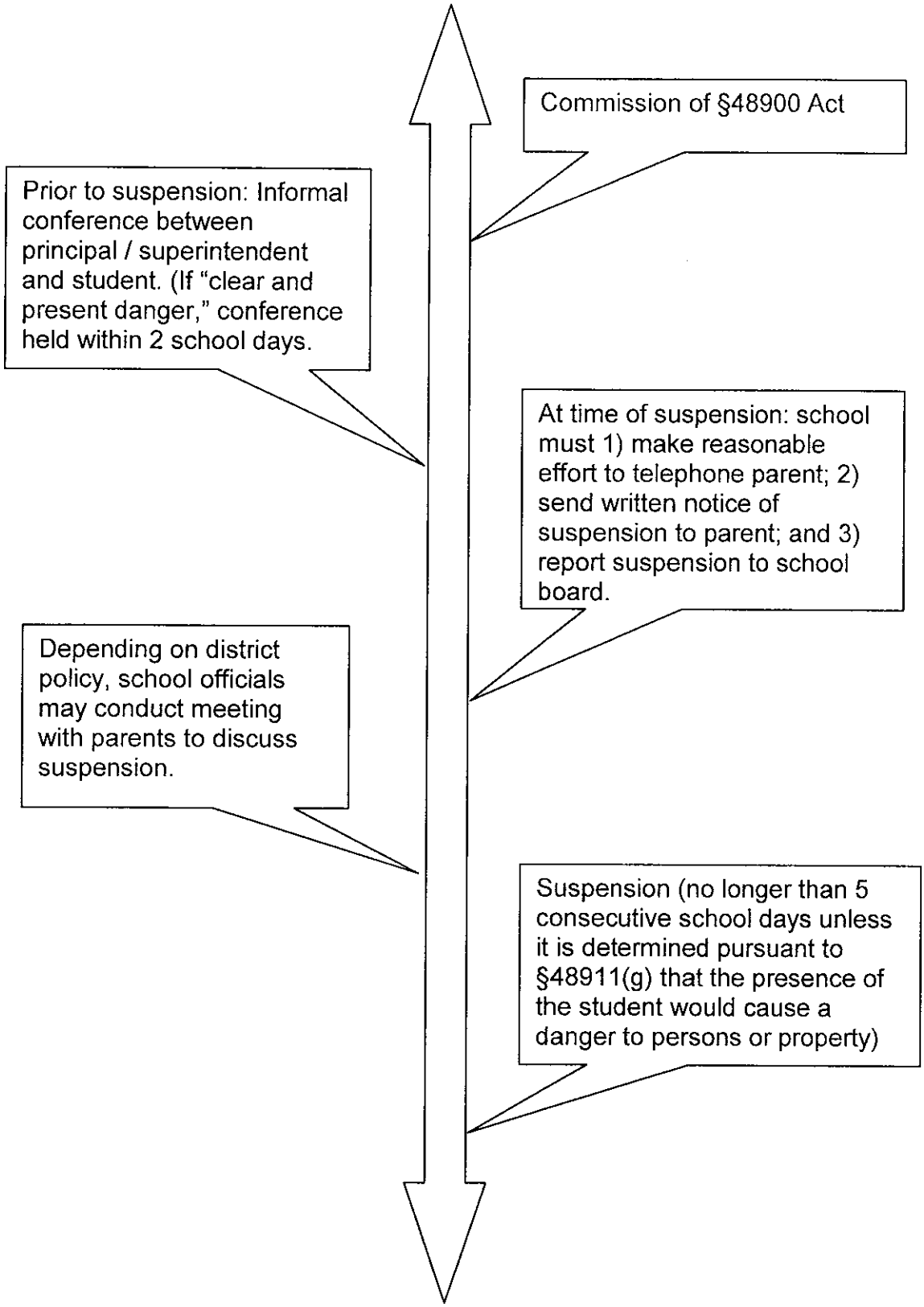
B. *Language.*

If your client, or his or her parents, are not fluent in English, all documents should be provided in their native language and the hearing should be translated.

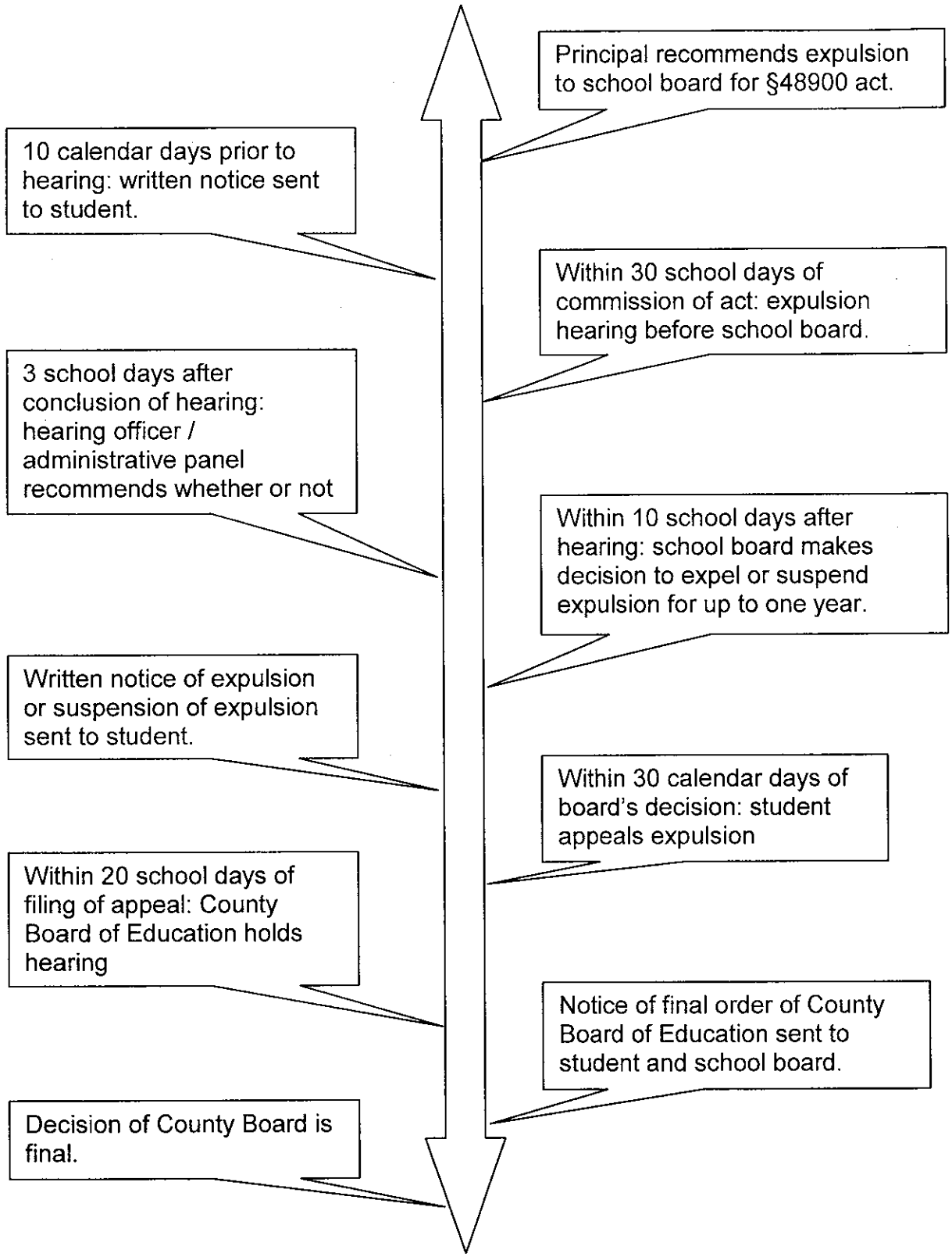
C. *Racial Bias.*

You may find evidence of racial bias in the particular incident your client was involved in (for example, your client, a student of color, was in a fight with a white student and the white student is not being recommended for expulsion) or in school discipline in general at the school (for example, your client reports that certain groups of students are targeted by administrators for school security.) Through a public records request you can obtain information from the school and the District about the racial breakdown of expulsions. This information may be helpful in the expulsion process, or in a subsequent complaint with the U.S. Department of Education Office of Civil Rights. (See information from OCR in this manual.)

## SUSPENSION CHRONOLOGY



## EXPULSION CHRONOLOGY



## CASE STUDY: MARIA DOE

An extremely perceptive and thoughtful high school student, Maria recognized that remaining in her neighborhood school would hinder her education. She knew getting a good education would help prepare her for college and for a successful future. To help reach her goals, last spring she decided to move in with her aunt and attend another school in a different city and district. This move produced tremendous results. At her new school, Maria excelled academically and socially. She became one of the top students in the school's Communication Arts and Sciences Academy. She participated on the on the school's volleyball team, earned a staff position on the school's Chicano/Latino publication and was selected to read her poetry on stage with an internationally-acclaimed poet.

One day, however, Maria was literally at the wrong place at the wrong time. While walking through a park to get to school, Maria witnessed a group of girls from a gang "jumping out" and robbing another student. Although Maria knew the girls, she was not friends with them and did not participate in the assault. Later that day Maria was called out of class. Because she was afraid of possible attacks from the gang, Maria refused to identify the girls who attacked the victim. As a result, Maria was suspended based on allegations that she had been a participant. The school failed to contact her family. Maria was taken to the police station and held in juvenile hall for the entire weekend. Even though police charges were not brought against Maria, the school later notified her that she would be recommended for expulsion. The school's evidence against Maria consisted of statements by the victim and a citizen who was at the park. The victim's declaration contained inconsistent statements and did not identify Maria as a participant in the robbery. Similarly, the citizen's statement in no way clarified Maria's involvement.

Legal Services for Children worked with Maria to defend her in her expulsion hearing. At the hearing, the school made allegations that Maria was gang involved, but cross-examination revealed that the school personnel who testified did not even know Maria, they just assumed she was gang involved because she knew certain students. A teacher testified that all the Latino students at that high school know each other because they are a small, isolated community. Because Maria had an advocate, the assumptions made by the school staff were undermined. Before the hearing started, the hearing panel admitted that they had never had cross-examination at an expulsion hearing before and that their hearings were usually about twenty minutes long.

Upon hearing of Maria's pending expulsion hearing, many teachers from her current and prior school wrote letters of reference praising Maria as a talented young woman who served as a student leader and was not a behavior problem. Using these character references, Maria's attorney was able to establish that Maria's expulsion was unnecessary and would be detrimental to the future of a bright and talented student. At the hearing, the panel recommended that the expulsion be suspended. When she was allowed to return to school, Maria's classmates threw her a party to welcome her back.

# JUSTICE POLICY INSTITUTE PRESS RELEASE ON LEVEL OF SCHOOL CRIME AND INCREASED USE OF SCHOOL SUSPENSIONS

AUGUST 29, 2001

## Students Report School Crime at Same Level as 1970s

### But Use of Suspension Doubles

**Washington, DC:** As youth begin their school year, a new policy brief by the Justice Policy Institute shows that while students are as well behaved and are reporting the same rates of crime seen in the 1970s, the number of youth suspended on an annual basis has nearly doubled over the same period.
"Today's high school seniors are no more likely than their parents were to be assaulted, injured, threatened or robbed in high school," says Vincent Schiraldi, JPI Director. "Ironically, today's students are much more likely to be suspended than their parents were. We need to question why a well-behaved generation is being so severely punished by being denied access to education."

The policy brief, drawing upon data from the University of Michigan's Institute for Social Research and the Justice Department, showed that 95% of students consistently reported that they have never been threatened with a weapon, and that the proportion of students reporting no serious violence has remained stable throughout the last two decades. About 85% of high school seniors in 1976 and 1998 reported they were free from injury, threats of injury with a weapon, theft and assault. These comforting findings contrast with the disturbing trends seen in data supplied by the US Department of Education: the number of youth suspensions has nearly doubled since the 1970s (from 3.7% of students, or 1.7 million youth in 1974, to 6.8% of students, or 3.2 million students in 1998). African American youth are 2.6 times more likely to be suspended than white youth.

"The increase in suspensions seems to have little to do with serious school crime, which has not risen," says Jason Ziedenberg, JPI Senior Policy Analyst. "When youth are kicked out of school, they are more likely to get into fights, carry a weapon and engage in reckless behavior. Aggressive suspension policies may actually put youth at risk."

The policy brief from JPI is the third in a series of surveys of school crime and juvenile arrest trends issued since the national media identified "school shootings" as a trend, and heightened concerns about school safety. Previous JPI studies have shown that school crime, including serious violent crime, is on the decline, and that opinion surveys show the public thinks much more serious crime is actually occurring in schools than is reported in surveys by law enforcement and arrest reports.

*A full copy of the JPI policy brief "Safe Schools and Suspension" can be found on the Institute's website, at http://www.cjcj.org. The Justice Policy Institute is a criminal justice policy and research organization based in Washington, DC.*

## A STUDENT'S GUIDE TO SCHOOL DISCIPLINE: WHAT ARE MY RIGHTS?

*What is a suspension?* A *suspension* occurs when a student is temporarily removed from school. In most cases a suspension cannot be for more than five days. The only exception is if the student is recommended for expulsion. In that case, he or she can be suspended until the hearing only if it is determined after a meeting with the student's parents, that he or she causes an ongoing threat.

*What is an expulsion?* An *expulsion* is when a student is prohibited from attending any school in the district. If a student is expelled, he or she must be allowed to apply to be readmitted no later than the end of the semester after the incident occurred (or one year after, if the incident was one of the five "zero tolerance" offenses: possession of a firearm, brandishing a knife at another person, unlawfully selling a controlled substance, sexual assault or battery, or possession of an explosive).

*Can I be suspended or expelled for just any reason?* No! You must have committed one of the following acts below in order to be suspended:

- Causing, attempting, or threatening physical injury *or* purposefully using force or violence upon another (except in self-defense).
- Possessing, selling, or otherwise furnishing any firearm, knife, explosive, or other dangerous object without written permission of a certificated school employee and concurrence by the principal or principal's designee.
- Possessing, using, selling, or being under the influence of a controlled substance, an alcoholic beverage, or an intoxicant of any kind.
- Offering, arranging, or regulating the sale of any controlled substance, alcoholic beverage, or intoxicant of any kind and then selling or delivering the substance representing it as a controlled substance, alcoholic beverage, or intoxicant of any kind.
- Committing robbery, attempted robbery, or extortion.
- Causing or attempting to cause damage to school property or private property.
- Stealing or attempting to steal school property or private property.
- Possession or use of non-prescribed tobacco or products containing tobacco or nicotine.
- Committing an obscene act, or engaging in habitual profanity or vulgarity.
- Possessing, offering, arranging or negotiating to sell any drug paraphernalia.
- Disrupting school activities or purposefully defying the valid authority of school authorities engaged in the performance of their duties.
- Knowingly receiving stolen school property or private property.
- Possessing an imitation firearm.
- Committing or attempting to commit sexual assault or sexual battery.
- Harassing, threatening, or intimidating a student who is a witness in a school disciplinary proceeding in order to prevent him/her from being a witness or to retaliate against him/her for being a witness.
- Offering, negotiating the sale of, or selling the prescription drug Soma.
- Engaging in or attempting to engage in hazing.
- Committing sexual harassment which is 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.
- Causing, attempting to cause, or threatening to cause an act of hate violence.
- Intentionally engaging in harassment, threats, and/or intimidation directed at school district personnel or students. This must be sufficiently severe and pervasive enough to have the actual and reasonably expected effect of materially disrupting classwork, creating substantial disorder, and invalidating the rights of school personnel or students by creating an intimidating or hostile educational environment.
- Making terroristic threats against school authorities or school property.

*** You cannot be suspended for being late or absent from school!***

****You cannot be suspended unless the act was related to a school activity.****

*What are the limitations on suspensions?*
You can only be suspended if other means of correction have failed. That means, the school must try other ways to solve the problem before turning to suspension. The exception is if you were suspended under one of the first five grounds listed above, or if your presence causes a threat.

*What are the limitations on expulsions?*
If you commit a *"zero tolerance"* offense the school board must expel you. Those offenses are: possessing a firearm, brandishing a knife at another person, unlawfully selling a controlled substance, possessing an explosive, and sexual assault or battery. If you are being recommended for any other reason you cannot be expelled unless the school board finds that other means of correction are not feasible or have repeatedly failed or that you are a continuing danger to the physical safety of yourself or others. Even for a zero tolerance offense, the board can order a "suspended expulsion" which means you are on probation, but you can return to school.

*Before I am suspended, will I have an opportunity to tell my side of the story?*
Yes! Before you are suspended, the principal, principal's designee, or the superintendent of schools must conduct a conference with you and, if possible, with the teacher, supervisor, or school employee who referred you for suspension. At the conference, you must be told of the reason for the proposed suspension and the evidence against you. You must also be given the opportunity to present your version of what happened and evidence in your defense.

The only time a student is not entitled to a conference right away is when an "emergency situation" exists, meaning that a student presents "a clear and present danger to the life, safety, or health of students or school personnel." If you are suspended for this reason without a conference, the school must notify both you and your parent/guardian/caregiver of your right to a conference and your right to return to school for the purpose of the conference within two days.

*If I am suspended, can my parents meet with the principal?:* Yes! At the time of the suspension, a school employee must make a reasonable effort to contact your parent or guardian in person or by telephone. Your parent or guardian must also be notified in *writing* of the suspension. In every school where 15% or more of the students speak a single primary language other than English, this notice must be written in both English and the student's primary language. The school must give your parents the opportunity to come in and discuss the suspension. However, schools cannot punish you or keep you out of school if your parent or guardian does not attend the conference.

*What are my rights if I am recommended for expulsion?*
You can only be expelled by the school board. You can only be expelled after a hearing. You have the right to:

- Receive notice of the hearing ten days before your hearing, telling you exactly what you are being expelled for;
- Look at all documents that will be used at the hearing, before the hearing;
- Bring your own witnesses to the hearing and/ or ask the district to subpoena witnesses for you (subpoena means force them to come to the hearing);
- Question any witness that the school brings to the hearing;
- Bring a lawyer or other advocate;
- Appeal the board's decision if the hearing was not conducted fairly.

NOTE: Expulsions are very serious. You may want to have a lawyer. Legal Services for Children may be able to help find you a free lawyer.

**This information was prepared by Legal Services for Children.**
**For assistance, please call (415) 863-3762.**

## CASE LAW REFERENCE GUIDE

1. *Goss v. Lopez* (1975) 419 U.S. 565, 95 S. Ct. 729.

   Students facing temporary suspension from public school are entitled to protection under the due process clause; what process is due.

2. *Fremont Union High School v. Santa Clara County Board of Education* (1991) 235 Cal.App.3d 1182; 286 Cal.Rptr. 915.

   No rational basis for distinguishing between prohibited acts based on whether they occur at a student's own campus or the campus of another student; what is determinative is the act's connection to school attendance or school activity.

3. *Montova v. Sanger Unified School District* (C.D.Cal. 1980) 502 F. Supp.209

   Extension of suspensions pending expulsion hearing is a separate suspension subject to due process and compliance with California statute.

4. *Slayton v. Pomona Unified School District* (1984) 161 Cal.App.3d 538; 207 Cal.Rptr. 705.

   Notice and timing requirements.

5. *Garcia v. Los Angeles County Board of Education* (1981) 123 Cal.App.3d 807; 177 Cal.Rptr. 29.

   Expulsion hearings must be held within 30 school days after date it was determined that pupil had committed any of the acts enumerated in Section 48900. Failure to follow these provisions is grounds to invalidate the actions taken at the hearing.

6. *Gonzales v. McEuen* (C.D.Cal. 1977) 435 F.Supp 460.

   Notice of expulsion hearing, to be adequate, must communicate to the recipient that nature of the proceedings and must include a statement not only of the specific charge, but also of the basic rights afforded to the student as per the Education Code.

7. *John A. v. San Bernardino City Unified School District* (1982) 33 Cal.3d 301; 187 Cal.Rptr. 472.

   Evidence case. *John A* reversed an expulsion based on denial of a student's due process right to confront and cross-examine witnesses against him. The use of declarations in expulsion cases may be used in very limited circumstances, only when it would subject the informant to significant and specific risk of harm. The board must make a finding of a significant and specific risk of harm to the informant before relying on declarations.

8. *Gordon J. v. Santa Ana Unified School District* (1984) 162 Cal.App.3d 530; 208 Cal.Rptr. 657.

   The remedy of exclusion of illegally seized evidence is not available in an administrative hearing.

9. *In Re William G.* (1985) 40 Cal.3d 550; 221 Cal.Rptr. 118.

   Searches of students by public school officials must be based on a reasonable suspicion that the students engaged in proscribed activity.

10. *In Re Joseph G.* (1995) 38 Cal. Rptr. 2d 902

Multiple searches of a juvenile's locker, 6 days after the precipitating incident, are reasonable. Carrying a firearm in a public place is not a lesser included offense of carrying a loaded firearm at school.

11. *New Jersey v. T.L.O.* (1985) 105 S.Ct. 773; 469 U.S. 325

The fourth amendment's prohibition on unreasonable searches and seizures extends to searches carried out by public school officials. Because of the need to "balance between the schoolchildren's legitimate expectations of privacy and the school's equally legitimate need to maintain an environment in which learning can take place ... school officials need not obtain a warrant before searching a student under their authority." The legality of a search of a student turns on the *reasonableness* of the search, measured by the totality of the circumstances.

In the instant case, a search of a 14-year-old high school freshman's purse after she denied having smoked in the lavatory, and after her companion confessed to the principal that she had been smoking, was reasonable under the circumstances.

12. *Board of Education of the Sacramento City Unified School District v. Sacramento County Board of Education* (2001) 85 Cal.App.4th 1321; 102 Cal.Rptr.2d 872

The forty day statutory deadline prescribed by § 48918 (a) for the school board to make a decision whether to expel a student upon receiving a recommendation for expulsion is *directory* only rather than mandatory. As such, the remedy for any delay beyond the forty days is a petition for writ of ordinary mandamus to compel the School Board to perform its duty.

"In light of the legislative directive in section 48918 to conduct post-hearing proceedings promptly and with reasonable diligence, a student whose case has languished for an extended time period without resolution would have a credible claim for a due process violation based on the prejudicial effect of the unreasonable delay."

13. *In Re Tyrell J* (1994) 32 Cal.Rptr. 2d 33

Juvenile who is subject to warrantless searches as a condition of his probation does not have a reasonable expectation of privacy over marijuana hidden in his pants. Further, even though the police officer was unaware that the juvenile was on probation and subject to warrantless searches, the police officer's warrantless search, unjustified by reasonable suspicion or probable cause, nonetheless does not violate the Fourth Amendment.

14. *Dylan W v. Vista Unified School District* (2001) Unpublished opinion, 2001 WL 1397276

Judicial Review, Evidence. The independent judgment standard is the appropriate standard for judicial review of an administrative hearing decision to expel a student. In this case, the School District expelled a student for using marijuana and contributing $10 towards the purchase of marijuana on a school snowboarding trip. Upon review, the Superior Court (trial court) reversed saying that there was not substantial evidence to prove that the student was a continuing threat to himself or others. This Court found that the Superior Court did not have

"substantial evidence" to overturn the District's decision at the administrative hearing that Dylan was a continuing danger to himself and others.

15. *In Re Randy G.* (2001) 110 Cal.Rptr.2d 516

A school security officer's 10 minute detention of a 14 year old student did not taint the student's consent to a pat-down search and the knife that was recovered by the search was properly admitted into evidence. Detention of a minor at school does not implicate the Fourth Amendment *unless* the detention is arbitrary, capricious or used for the purposes of harassment. "The broad authority of school administrators over student behavior, school safety, and the learning environment requires that school officials have the power to stop a minor student in order to ask questions or conduct an investigation even in the absence of reasonable suspicion." By contrast, the minor's interest in liberty is minimal since, "the minor is not free to move about during the school day." School security officers are considered school officials (not law enforcement officers) and have the same broad power to detain a student as any other school official. The court leaves open the question of an appropriate test for school searches conducted by school officials acting in concert with law enforcement.

## INFORMATION FROM THE OFFICE OF CIVIL RIGHTS: QUESTIONS AND ANSWERS ON OCR'S COMPLAINT PROCESS[1]

**How do I file a complaint of discrimination with OCR?**

You may contact an OCR enforcement office to obtain a complaint form or you may file a discrimination complaint by using the on-line complaint form.

**What do I need to include in my complaint?**

You should let us know which school, college or other institution you are complaining about, the person(s) who has been discriminated against, when the discrimination occurred, and you should sign and date the letter and let us know how we can reach you by phone and letter so that we can contact you. If filing on-line, you will still need to provide an original signature by mail, which may be done by printing and mailing a "Consent Form" linked from the bottom of the on-line complaint form.

**How soon after the discrimination do I need to file?**

You need to file your complaint within 180 calendar days after the discrimination. There are certain limited circumstances that allow our agency to grant a waiver. If you need more information about your situation, contact the OCR enforcement office responsible for the state in which the institution is located.

**How promptly will OCR respond to my complaint?**

Within 7 days, OCR will acknowledge receiving your complaint and will contact you by letter or telephone within 30 days to let you know whether we will proceed further with your complaint. OCR's goal is to resolve complaints within 180 days, and most of our complaints are resolved within that period.

**What is OCR's role during the complaint process?**

OCR's role is to be a neutral fact-finder and to promptly resolve complaints. OCR has a variety of options for resolving complaints, including facilitated resolutions and investigations. OCR does not act as an advocate for either party during the process.

**What if I am already pursuing my complaint within the school district or college or with another agency?**

OCR does not handle cases that are being addressed by another agency or within a school's or college's formal grievance procedure if OCR anticipates that the agency you filed with will provide you with a resolution process comparable to OCR's. Once the other complaint process is completed, you have 60 days to refile your complaint with OCR. OCR's first step will be to determine whether to defer to the result reached in the other process.

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[1] Information taken from http://www.ed.gov/about/offices/list/ocr/qa-complaints.html

**Do I have to file an OCR complaint before I can file a claim in court?**

The regulations under Title VI, Title IX, Section 504 and Title II do not require you to file with OCR prior to filing a claim under these laws in Federal court. The regulations under the Age Discrimination Act, however, allow you to file a claim in Federal court under that law only after: 1) 180 days have elapsed since you filed the complaint with OCR and OCR has made no finding, or 2) OCR issues a finding in favor of the recipient. If this occurs, OCR will promptly notify you and remind you of your right to file in court.

If you are considering filing in court, bear in mind that OCR does not represent complaining parties or provide advice regarding court filings. You would need to use the services of your own attorney. Also, if you proceed with your claim in a court, OCR will not continue to pursue your OCR complaint.

For more information you may refer to What to Expect from OCR and the OCR Case Resolution Manual.

## CONTACT OCR

For assistance related to civil rights, you may contact the OCR headquarters office in Washington D.C. or the OCR enforcement office serving your state or territory. Contact the enforcement offices if you wish to file a complaint (or use our online complaint form) or if you need technical assistance on a problem or assistance to prevent civil rights problems. Contact the OCR headquarters office if you have a question on national policy, to make a Freedom of Information request for information that is national in scope, or to request publications or other assistance that is not available online.

We encourage students and parents, representatives of education institutions, and other OCR customers to use e-mail or fax to communicate with OCR when possible. For those without current e-mail accounts, Internet access may be freely available from your local public library, and free e-mail accounts are available from several large providers.

The OCR office for California is located at:

**San Francisco Office**
**Office for Civil Rights**
**U.S. Department of Education**
**Old Federal Building**
**50 United Nations Plaza, Room 239**
**San Francisco, CA 94102-4102**

**Telephone: 415-556-4275**
**FAX: 415-437-7783; TDD: 415-437-7786**
**Email: OCR_SanFrancisco@ed.gov**

The OCR National Headquarters is located at:

**U.S. Department of Education**
**Office for Civil Rights**
**Customer Service Team**
**550 12th Street, SW**
**Washington, D.C. 20202-1100**

**Telephone:1-800-421-3481**
**FAX: 202-245-6840; TDD: 877-521-2172**
**Email: OCR@ed.gov**

Abigail Trillin (State Bar # 179052)
Legal Services for Children, Inc.
1254 Market Street, Third Floor
San Francisco, CA 94102
Phone: (415) 863-3762
Fax: (415) 863-7708

Attorney for Minor

**County Board of Education**
**County of Alameda**

| | |
|---|---|
| In the Matter of Expulsion of XXXX XXXX | APPEAL TO THE COUNTY BOARD OF EDUCATION |

## I. Statement of the Facts

On September 17th, 2002, XXXX XXXX's PE teacher, HHHH HHHHHH, believed that he overheard XXXX say "f_uck you" to another student. Mr. HHHHHH gave XXXX a referral and told him to go to the office. Mr. HHHHHH poked XXXX in the chest several times, telling him to go to the office. (Mr. HHHHHH stated that he did not touch XXXX's chest, but only pointed at him.) XXXX became upset and told Mr. HHHHHH not to touch him. XXXX stated that at that point he felt threatened by Mr. HHHHHH and asked him if he was trying to fight him. (See police report, District packet p. 9c) Mr. HHHHHH reported that he believes XXXX challenged him to a fight. Mr. HHHHHH told XXXX that he needed to proceed to the office and XXXX complied. (See Vice Principal's statement, Panel Transcript p. 14)

Prior to this incident, in January 2002, XXXX was choked by a vice-principal at Bancroft Middle School. The vice-principal, Mr. WWWWW choked XXXX to the point that it was

interfering with XXXX's breathing. XXXX's parents filed a complaint regarding this incident, but it was never followed up on. In fact, the District has just recently begun following up on that complaint, after XXXX's expulsion hearing.

XXXX was recommended for expulsion for the September 17th, 2002 incident. At his hearing his family brought advocates to speak about his educational needs, but XXXX was not represented by at attorney. The family brought a witness statement from a student who witnessed the incident, but whose statement was not included in the District's packet. The panel refused to receive that statement.

XXXX was recommended for expulsion by the Administrative panel and expelled by the school board on November 5th, 2002. XXXX was offered the option of enrolling in another Middle School, John Muir, on a suspended expulsion. He did so and has been attending John Muir since the end of November.

## II. Argument

### A. The Pupil Was Not Afforded a Fair Hearing Before the School District Governing Board Because the Pupil Was Precluded from Presenting Evidence and from Questioning the Witnesses.

The Education Code clearly provides students with the right to present evidence at their expulsion hearing. California Education Code 48918(b) (5). This provision is essential to ensuring that students receive a fair hearing and are afforded their due process protections. In this case, the student brought a witness statement from another student who witnessed the incident in questions. The panel refused to accept the statement, explaining that that same student had told the vice-principal that he did not witness anything, so there could be an issue of falsification. Panel Transcript p. 86. Certainly, it is part of the panel's job to assess the credibility of any and all witnesses. They could have, in their review of the witness statement, made a determination that the statement was not credible. However, it is not within their rights to refuse to accept the evidence at all. The panel made an assumption that, because the school had not included a

statement from this student, that his statement could not be relevant. However, the panel is supposed to act as the objective body and hear evidence from both sides. The panel should have made its own, objective evaluation of the evidence, rather than refusing to accept evidence that was provided by the student rather than the school. The student has the right to present any and all evidence to support his defense. The panel cannot make a determination that they will not accept a piece of evidence, and by doing so they denied the student the fair hearing and improperly excluded evidence.

This is a case in which the facts were in dispute. There was a significant difference in the teacher's version of the incident and the student's, including regarding exactly what was said. Denying the student the right to present a witness statement denied him the right to fully present his case. The District therefore denied the student a fair hearing and denied him his due process rights.

B. The District Abused its Discretion in that the Findings are not Supported by the Evidence.

Education Code 48915(b) states that a decision to expel for

> "shall be based on 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."

In this case the panel made both of these findings. However, neither finding is supported by the evidence.

The panel found that "other means of correction are not feasible or have repeatedly failed to bring about the proper conduct" based on the fact that "XXXX XXXX has a history of similar behavior....School interventions have been provided and have not brought about a successful change in behavior." However, the record does not reflect significant school interventions. The discipline report (District packet p.6) records discipline incidents in the 2001-2002 school year.

Not one of these recordings references a referral to an anger management program, counseling or a conflict management program. The vice-principal stated that "counseling has been offered up" (Panel Transcript p. 18) but that is not evidenced in any of the documents in the packet and the family states that that is not the case. In the hearing it is clear that the parents never heard anything about counseling. (Panel Transcript p. 18) The statement from the principal states that XXXX has had an "anger management problem since the seventh grade." Panel Hearing Transcript, p. 29. XXXX is a repeating eighth grader, so the principal is indicating that he has had an anger management problem for two years. However, over all that time, this issue was never addressed with a positive intervention from the school to help XXXX in the area of anger management, such as a referral to an anger management program.

On the contrary, instead of offering interventions to help XXXX deal with his anger, the school allowed a situation which significantly increased XXXX's anger level and made him particularly vulnerable to getting upset at a teacher, as he did in this incident. In January 2002 vice-principal Mr. WWWWW held XXXX in a choke-hold to the point that it interfered with XXXX's breathing. In the course of breaking up a fight, Mr. WWWWW pushed XXXX against the wall and rested his wrist on his throat to the point that XXXX could not breathe. XXXX's parents filed a complaint that was never in anyway followed up on. They also met with the principal about the incident who assured them that she would get back to them but never did. Panel Transcript, p. 115-116. (The District has just recently begun to follow up on their complaint, only after the expulsion hearing.) The fact that his happened and was not followed up on taught XXXX two devastating lessons. First, he was taught that teachers at his school can and do seriously physically hurt him Secondly, he was taught, by the lack of follow-up, that this was acceptable to the school and the District. This put him in a position to feel very threatened by Mr. HHHHHH and understandably concerned that he too was going to hit him, especially when Mr. HHHHHH poked him. It is the context for the anger XXXX expressed towards Mr. HHHHHH that day. If XXXX has not been seriously hurt by a school administrator, or if the school had dealt with the incident in

such a way that clearly indicated to XXXX that such behavior was not going to be tolerated by the school, XXXX would have most likely been in a very different state of mind when he was approached by Mr. HHHHHH. It should be noted that the majority of XXXX's discipline incidents happened after the incident with Mr. WWWWW. If that incident had been handled properly, XXXX may not have been left feeling angry and mistrustful. The school clearly had the ability to provide an intervention that would have assisted XXXX in this area.

Therefore, not only was there not evidence to support that other means of correction had been tried and failed, there was evidence to the contrary—evidence that the school had failed in its legal obligation to follow up on a complaint as opposed to intervening and resolving the situation in such a way that could have reduced XXXX's feelings of anger and fear.

The District also found that "due to the nature of the act, the presence of the pupil cause a continuing danger to the physical safety of the pupil and others." Administrative Findings and Recommendation, p. 2. There is no further explanation of the reason for that finding and it is not supported by evidence in the record. There is no allegation by anyone that XXXX touched the teacher. In fact, despite XXXX being agitated and upset, all agree that he then proceeded to the office. The statement from the Principal states that the teacher was "shaken by the incident and felt physically threatened" Administrative Panel Findings p. 7. However, the Education Code requires not that a teacher feel upset or perceive a threat but that the student is, in fact, a continuing danger.

It appears, in fact, that the Board did not consider XXXX a continuing danger. XXXX was given the option of enrolling in one of the other comprehensive middle schools, which he has done. If the Board really believed that XXXX constituted a continuing danger they certainly would not have allowed him to attend one of their other middle schools. It appears that XXXX's continued presence at Bancroft may have been an issue for the specific teacher involved. The Vice Principal stated that "because of the threat to a teacher the principal had to recommend for expulsion." (Panel Transcript p. 14) That may have been grounds for XXXX to be transferred out

of Mr. HHHHHH's class, but does not constitute grounds for an expulsion. The board's *own recommendation* that XXXX be permitted to enroll at John Muir make it clear that there was not evidence that XXXX posed a continuing danger.

## III. Conclusion

The San Leandro School District denied XXXX XXXX a fair hearing by refusing to accept evidence he presented on his behalf and improperly excluding that evidence. For that reason, their decision should be overturned.

Additionally, the District's findings that "other means of correction have repeatedly failed" and that XXXX constitutes a "continuing danger" are not supported by the evidence. On the contrary, the Board undermined their own finding of "continuing danger" by allowing XXXX to enroll in another school.

Therefore, it is respectfully requested that the County Board overturn the District's decision to expel XXXX XXXX order that his record be expunged.

Respectfully Submitted,

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Abigail Trillin

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Attorney for Minor

**County Board of Education**
**County of Alameda**

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|---|---|
| In the Matter of Expulsion of X. | APPEAL TO THE COUNTY BOARD OF EDUCATION |

## IV. Statement of the Facts

On September 7, 2001, X, a senior at San Leandro High School, was leaving school for the day when he was approached by a campus security supervisor, BBBBB. Ms. BBBBB told him to go into the assistant principal's office, because she believed he was in violation of the dress code for wearing saggy pants. Without explaining the violation to him or inspecting his clothing to determine whether it was truly in violation, Ms. BBBBB insisted that X remain in the office. Certain that his clothing did not violate the dress code and concerned that Ms. BBBBB was going to discipline him unfairly, X left the office and continued on his route toward home. Ms. BBBBB ran after him and ordered him to stop, stepping in front of him, grabbing at him and pushing him back with her hands. See Testimony of X, Administrative Hearing Panel Transcript at pp. 298-307 and Copy of Recording of videotape of incident. X continued to walk quietly to the exit of campus, keeping his hands in his pockets, not once touching Ms. BBBBB. *Id.* He told her on

numerous occasions to take her hands off him, but she persisted in pushing and grabbing at him. Testimony of W , Transcript at pp. 102-06; Testimony of X, pp. 298-307; videotape of incident. Ms. BBBBB followed him to the door of the building, out the door and to the sidewalk. Xnever once touched Ms. BBBBB, kept his hands in his pocket, and consistently moved away from the conflict, attempting to leave the school and Ms. BBBBB. *Id.* Ms. BBBBB finally stopped walking with X when he reached the sidewalk outside school grounds. When X got home, he discovered that the school had called to say he had been suspended and would be expelled because he had "assaulted" a school guard.

A meeting was held between school Principal DDDDD, Assistant Principal SSSSS, X and X's mother, Mrs. X, on September 10, 2001, to discuss the incident. Although X told school officials that Ms. BBBBB had grabbed and pushed him, he was never asked about it by Mr. SSSSS or any other official. Mr. SSSSS, who prepared the report recommending expulsion and expulsion narrative, stated that his investigation of the incident included reading Ms. BBBBB's statement, speaking with Ms. BBBBB, being present at a meeting between Mr. SSSSS, X and Ms. X, and speaking with Mr. SSSSS and other assistant principals who did not witness the incident. Administrative Panel Hearing Transcript, Vol. I, pp. 29-30, 53-55. He did not attempt to interview any other people who might have witnessed the incident. Transcript at pp. 53-55, 64-65. He then concluded that Ms. BBBBB's version was the correct version, because when Mr. SSSSS encounters conflicting statements between a staff member and a student, "I would tend to go with the staff member over the student's statement almost every time." Transcript at p. 55, ll. 18-19. Although Mr. SSSSS stated that the corroboration of Ms. BBBBB's version is the videotape of the events captured by campus security cameras, that video was not retrieved until September 19, 2001, Testimony of TTTTT, Transcript at p. 141, long after Mr. SSSSS had drafted the expulsion report. Indeed, the Alameda County Board of Education is encouraged to view the videotape

which corroborates not Ms. BBBBB's version, but X's version of events. Based on this cursory investigation, the school recommended expulsion to the San Leandro Unified School District.

An administrative panel hearing was held on October 30 and 31, 2001. Those testifying included SSSSS, San Leandro High School Assistant Principal; BBBBB, the security guard involved in the September 7, 2001 incident; BBBBB, Assistant Principal; a student witness, W ; TTTTT, a campus security supervisor; and X. The panel also viewed copies of a digital recording of portions of the incident caught by campus security video cameras that day. That panel found the evidence inconclusive regarding both the campus supervisor's allegations of an intentional "bumping" and X's allegations that the supervisor had grabbed him. The panel found that there was not substantial evidence to support a finding of battery against a school employee. Findings of November 1, 2001 Administrative panel, p. 1.

The panel found, however, that "although, substantial proof of battery was inadequate to make a finding, that the act of defiance was dangerous and put at risk the safety of the Campus Supervisor, the student himself, and possibly other students had this situation escalated." *Id.*

The panel found that the student's disciplinary history was in dispute, but nonetheless stated that his record "reflects a pattern of conflict with following the directives of school officials and that numerous teachers had referred X for defiance." It determined that the record *did not* support a finding under Cal. Educ. Code § 48915(e)(1) that "that other means of correction are not feasible or have repeatedly failed to bring about proper conduct". Findings at p. 2.

However, the panel found that the September 7 incident and X's "pattern of behavior" supported a finding under California Ed. Code § 48915(e)(2). It found that "the student's behavior on September 7, 2001 was provocative and should it reoccur, would pose a threat to the safety of the student and others. The discipline record reflects a pattern of defiance, which requires intervention, as it creates a safety issue at school." Findings at 3. The panel

recommended expulsion. The panel recommended the option of a suspended expulsion, wherein X would be allowed to return to the high school on a probationary basis. *Id.*

On November 6, 2001, the governing board of the San Leandro Unified School District met to consider the expulsion. The board adopted the facts as contained in the expulsion narrative and the Administrative Panel's conclusions of law and the findings of fact. It voted to expel X under Cal. Education Code § 48915(e) for a serious violation of California Education Code Section 48900(k) for defiance of valid school authority. See Expulsion Notification of November 7, 2001. It also held under Section 48915(e)(2) that "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." It adopted the recommendation of the panel that the expulsion be suspended and X be allowed to return to school on a probationary basis. Expulsion Notification at 1. It also adopted the rehabilitation requirements recommended by the administrative panel. Expulsion Notification at 2.

X was placed on extended suspension following the September 7 incident until November 13, 2001 when he was allowed to return on a probationary status with a suspended expulsion. X has already been deprived of over two months of school and school-related activities during his senior year of high school.

## V. Argument

### B. The District Abused its Discretion Because the Findings are Not Supported by the Evidence.

Education Code 48915(e) states that a decision to expel for

> "defiance of valid school authority:..shall be based on one or both of the following:
> (3) Other means of correction are not feasible or have repeatedly failed to bring about proper conduct.
> (4) 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.

Although he maintains that he was not in violation of the dress code and that Ms. BBBBB overreacted and inappropriately touched him, X does not dispute the administrative panel's finding of defiance regarding the September 7, 2001 incident. He does dispute the panel's finding

that he has exhibited a pattern of defiance and that the nature of the September 7 act combined with the incidents recorded in his school file is such that his presence at San Leandro High School causes a continuing danger to the physical safety of himself or others.

*1. The evidence does not support a finding under Cal. Educ. Code § 48915(e)(2).*

The evidence does not support a finding that X poses any kind of threat or danger to his own or others' physical safety. During the September 7 incident, the evidence shows that X kept his hands in his pocket the entire time, except toward the very end to pull his arm out of Ms. BBBBB's grasp. His testimony, that of W and the videotape show that X attempted at every turn to avoid Ms. BBBBB. Testimony of W , Transcript at pp. 102-06; Testimony of X, pp. 298-307; videotape of incident. He was attempting to leave campus to defuse the situation. The panel's finding that the act of defiance was "dangerous and put at risk the safety of the Campus Supervisor, the student himself, and possibly other students *had this situation escalated*" is not supported by any evidence offered at the hearing. X's behavior as recorded on the videotape and as witnessed by W indicates that he was not trying to get into a confrontation or escalating situation with Ms. BBBBB, but rather to avoid it. Testimony of W , Transcript at pp. 102-03, 105; Testimony of X, p. 301, ll. 9-19); videotape of incident. It was Ms. BBBBB's behavior that caused the escalation of this incident. Other school staff who testified at the hearing, stated that when a student is attempting to leave campus, you let them leave unless you think they are going to harm themselves or someone else. Testimony of BBBBB, Transcript at pp. 274-75; testimony of SSSSS, Transcript at pp. 92-93; testimony of TTTTT at p. 127. Sadly, this was not communicated to Ms. BBBBB, who received little to no training from San Leandro School District on how to enforce school rules prior to the Sept. 7 incident. See Testimony of BBBBB, Transcript at pp. 184-85.

The only evidence offered at the hearing regarding whether X poses a threat to the physical safety of himself or others was Mr. SSSSS's testimony. Mr. SSSSS testified that

defiance itself equates to a danger to safety. (See Testimony of SSSSS, Transcript at p. 67 ("if we have defiant students at our school that it's not safe for anybody."), Transcript at pp. 88-89 ("I think the mere fact that he is defiant in so many circumstances makes him a threat to students and staff members.")). However, Mr. SSSSS himself testified that prior to that incident, X had never gotten a referral for anything but defiance. Transcript at p. 45. Mr. SSSSS stated that X had never had any problems with fighting, cutting classes, or attendance. Indeed, Mr. SSSSS stated that he is not a bad student. *Id.*

Indeed, X's school disciplinary record is void of any occasion in which he initiated aggressive physical force upon another student or school official. Furthermore, prior to September 7, 2001 X has never been suspended. Clearly, the school did not think at the time that X's behavior was dangerous to the physical safety of those at school. No police report was made about the incident. Transcript at 69. Mr. SSSSS did not ask Ms. BBBBB whether she was afraid should X return to the school. *Id.* Assistant Principal SSSSS made the conclusory statement that defiant behavior is equated with violence without producing any factual evidence to support his claim and the administrative panel and governing board accepted it. It is not enough to find that when a student is defiant, a school becomes unsafe. In order to expel X, the panel must have found that the nature of his own act makes him a continuing danger to the physical safety of others at school. The finding was made in a conclusory manner with no evidence whatsoever to support it.

Finally, the administrative panel and the governing board *by their own recommendations* indicate that they do not consider X's continuing presence at school to be a danger to the safety of himself or others. They recommended a suspended expulsion, allowing X to be back at school on a probationary basis. Were X truly a threat to the physical safety of himself or others, neither the panel nor the district board would have recommended allowing his continuing presence on campus.

2. *The Evidence Does Not Support a Finding that X Has a Pattern of Defiance.*

The panel abused its discretion in finding that X had exhibited a pattern of defiance at San Leandro High School. The only evidence to support that finding was SSSSS's statement regarding X's behavior, a statement he made based on three things: (1) his conversations with a colleague regarding some problems she was having with X; (2) his review of the X's record, the majority of which referred to incidents of which he had no personal knowledge and for which X received nothing more than a referral; and (3) his "investigation" of the September 7, 2001 incident which was extremely cursory and for which he had predetermined the outcome. Of Mr. SSSSS's own encounters with X, he only spoke in particular of working with X on the school election during which he said "there was no defiance whatsoever, he was very compliant with all my requests." Transcript at p. 45, ll. 17-20. He testified, again conclusorily, that X is "argumentative practically all the time," but did not give one example from his personal encounters with X. *Id.* at ll. 17-22. In discussing his knowledge of X's problems with a colleague, Mr. SSSSS stated that during the only occasion he personally witnessed their interaction, he saw "nothing significant". Trancript at p. 72, l. 7. Regarding the referrals on X's record, Mr. SSSSS indicated that he had no personal knowledge of any, other than that involving X's disagreement with his colleague. Transcript at p. 81. Mr. SSSSS himself had a difficult time interpreting what resulted from any of those referrals. Transcript at pp. 83-85.

If X's pattern of defiance had been so egregious, one suspects that the high school would have tried various means of correcting this problem short of expulsion. Yet the panel did not find that other means of correction had repeatedly failed to bring about proper conduct. Nor could it have. SSSSS testified that X had never been referred for formal counseling nor had he been given the opportunity to participate in conflict resolution programs. Transcript at pp. 87-89. Of the one incident that records a suspension, Mr. SSSSS had no personal knowledge, nor did the school offer testimony from any individual with personal knowledge. That recorded "suspension" was

disputed both by X's testimony, when he stated that he had not received a suspension, and by his attendance records which show him as present on the days following the incorrectly recorded suspension. Transcript at pp. 284-85, Expulsion packet at pp. 7b (Discipline Report for Grade 11) and 6a (Period Attendance Report from 09/07/00 thru 06/15/01). Thus, X had never even received a suspension prior to the September 7 incident. X testified that on most of these referrals, he was not disciplined. See Testimony of X, Transcript at pp. 339-41. Indeed, his mother was not even called on most. Transcript at p. 284. The school's allegation of his "pattern of defiance" is based merely on every referral that was ever given to X, regardless of whether or not it was sustained. Thus, the panel's finding is not supported by substantial evidence.

## VI. Conclusion

The Legislature made a decision to require certain findings before a District can expel a student. Presumably the purpose of requiring findings is to put some limitations on the situations in which a student can be expelled. Expulsion from school is a very serious matter. It was the legislature's clear intent to ensure that each district determine that expulsion is truly necessary before taking that drastic step, by finding that there were not other means to address the problem, or that allowing the student to return to school would be unsafe. In this case, the evidence does not support a finding that X's presence at San Leandro High School poses a danger to the physical safety of himself or other at school. Indeed, the evidence shows quite the opposite, that X is a good student with no record of violence. The panel and the school board implicitly acknowledged that by allowing X to return to school on a suspended expulsion. X has already been subjected to more than sufficient discipline for this incident. Therefore, it is respectfully requested that the County Board overturn the District's decision to expel X and order that his record be expunged.

Respectfully Submitted,

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Sarah Colby
Attorney for X

# SUSPENSION-EXPULSION MANUAL

## APPENDIX

A. Sample County Board Procedures: Alameda County

B. Information on Discipline Procedures for Special Education Students

C. Attorney General's Opinions on School Discipline

D. New York Times Article on Racial Bias in Public Schools

E. Board Policy from San Francisco Unified re: Police in School

F. Script for Expulsion Hearing from Oakland Unified School District

Students
## SCHOOL DISTRICT EXPULSION APPEALS

I. Responsibility

A. The County Board recognizes that student discipline is primarily the prerogative of the local school district governing board. The school district governing board has established policies and standards of behavior to promote learning and to protect the safety and well-being of all students. When these policies and standards are violated, it may be necessary for the school district governing board to expel a student from regular classroom instruction.

B. The County Board ensures fair and equal treatment of all students. The County Board recognizes that the rights to due process and the rights to a fair and just resolution of behavior issues are supported through the appeal process.

C. Expulsion is the most severe form of discipline which a school district governing board may invoke. The County Board is vested with the responsibility of serving as the final appeal body in such cases. The hearing of expulsion appeals is intended to safeguard the rights of the students, parents, and school district governing boards, as well as the rights of the County Office of Education.

II. Guidelines for Administrative Regulations

A. The County Board expects the County Superintendent to establish administrative regulations for expulsion appeals from school district governing boards which include, but are not limited to, the following:

1. Filing a notice of appeal.

2. Setting a hearing date.

3. Furnishing a notice to the student, the school district governing board, and the County Board regarding the appeal.

4. Furnishing a copy of the expulsion hearing record to the County Board

5. Conduct of the hearing.

6. Preserving a record of the appeal.

Students
SCHOOL DISTRICT EXPULSION APPEALS

B. The County Superintendent shall establish regulations which will assure that expulsion appeals are conducted in a timely and equitable manner.

Adopted by Alameda County Board of Education 3/23/93
Amended and adopted by Alameda County Board of Education 2/25/97

*Legal Reference:*
*EDUCATION CODE*
*48919 Appeal of expulsion*
*48920 Closed/public session for appeal of expulsion*
*48921 Determination of appeal; evidence, transcription*
*48922 Questions for review of decision*
*48923 Limitations of county decisions*
*48924 Notification to Expel/Final Decision*
*48925 Definition of Expulsion*

## Students
## SCHOOL DISTRICT EXPULSION APPEALS

I. Procedures for Appeals from Expulsion

A. Any pupil expelled from a public school in Alameda County, or his/her parent or guardian, may file an appeal, within thirty (30) calendar days following the date of the decision of the district governing board to expel the pupil, to the County Board of Education in the office of the Secretary of the Board at Alameda County Office of Education 313 West Winton Avenue, Hayward, CA. 94544, telephone 510/670-4225.

B. The appeal shall contain the following information:

1. Name and address of parent or guardian of the pupil, and the name and address of representative of the pupil, if any.

2. Name of the school and the pupil.

3. Grade most recently attended by the pupil.

4. A statement of the basis for the appeal

5. A transcribed copy of the complete record of the hearing on the expulsion conducted by the district governing board must be provided to the pupil within five (5) school days of his/her request to the school district. The record of the hearing shall be certified by the Secretary or Clerk of the district governing board to be a true and complete copy of the hearing at which the district governing board determined to expel the pupil. (The Appellant is responsible for the cost of this transcription unless the County Board reverses the action of the district governing board, in which case the district is required to reimburse the pupil for the cost, if any, of the transcript. If the appellant cannot reasonably afford the costs due to "limited income" or "exceptional necessary expenses" and so certifies to the school district, the transcripts will be provided at no cost to the appellant.)

C. Upon receipt of the appeal, the Secretary of the County Board of Education shall set the matter for a hearing at a regular or special meeting of the Board to be held within twenty (20) school days of the receipt of the appeal. "School day" refers to a day upon which the schools of the district are in session, or weekdays during the summer months. Appeals received after the expiration of the appeal period shall not be processed or set for hearing.

**Students**
**SCHOOL DISTRICT EXPULSION APPEALS**

D. The Secretary of the County Board shall within ten (10) days prior to the hearing, notify the pupil and the parent or guardian of the pupil, and the governing board of the district expelling the pupil, of the date, time, and place of the hearing, and of the matter to be heard. Such notices shall be by certified mail, or by personal service.

E. In addition, the notice to the pupil shall contain a notice of the intent of the County Board of Education to hold the hearing in an executive (closed) session unless the pupil, or the pupil's parent or guardian, requests in writing at least five (5) calendar days prior to the hearing that the hearing be conducted in an open (public) meeting. Unless the pupil, or parent or guardian of the pupil, shall request in writing that the hearing be held in an open meeting, the hearing shall be held in an executive (closed) session.

F. In addition, the notice to the school district governing board shall require them to forward to the Secretary of the County Board of Education at least five (5) days prior to the hearing the following documents, each of which shall be certified by the Secretary or Clerk of the school district governing board to be a true and complete copy:

1. The notice of hearing sent to the pupil.

2. A record of receipt (if any) by the pupil of the notice of hearing.

3. If the hearing was conducted before a hearing officer or a panel, the findings of fact and recommendation(s) of the hearing officer or panel.

4. The minutes of the meeting at which the governing board took action to expel the pupil.

5. The rules, regulations, and/or procedures adopted by the school district governing board relating to the conduct of hearings on the question of the expulsion of a pupil.

6. Certification of reason/s for excluded evidence, if any, as cited in Education Code 48922 and 48923.

7. A copy of all written evidence presented at the pupil's expulsion hearing.

8. A copy of the school district governing board's decision to expel and notice of expulsion decision which was sent to the pupil following the decision.

G. With the agenda for the meeting at which the appeal is to be heard, the Secretary shall forward to each member of the County Board of Education a copy of the appeal from the pupil or his/her parent or guardian, a copy of the transcription of the record of the hearing, and a copy of all documents supplied by the school district governing board of the district from which the pupil was expelled. Relevant documents, which cannot be forwarded with the agenda, may be supplied to the members of the County Board at the meeting during which the appeal will be heard. Such documents may be, but are not required to be, considered by the County Board at the hearing.

H. The Secretary may, but is not required to, review the record, including consultation with legal counsel, and investigate any matter relevant to the appeal. If such a review and/or investigation is made, the Secretary may reduce the results to writing and forward copies to the pupil or his/her parent or guardian, to the district governing board, and to members of the County Board at or prior to the meeting at which the appeal is to be heard. The Secretary may, after consultation with the President of the County Board, retain counsel to sit with the County Board to assist the County Board in the interpretation of any questions of law, which may be raised.

I. The hearing shall be conducted as follows:

1. Members of the County Board may review any documents, initially submitted to them, at the meeting during which the appeal will be heard.

2. The appellant and respondent shall be asked to make a statement, and the members of the County Board may question the appellant and respondent.

3. Following the hearing the appellant, respondent, and all witnesses shall be excused and the county Board shall adjourn to a closed session and shall deliberate the following subjects:

   a. Whether the district governing board proceeded without or in excess of its jurisdiction in expelling the pupil:

Students
SCHOOL DISTRICT EXPULSION APPEALS

1) Was the expulsion hearing commenced within the time periods prescribed in law?

2) Was the expulsion order based upon acts enumerated in Section 48900 of the Education Code?

3) Was the expulsion order based upon acts related to school activity or attendance?

b. Whether the pupil was afforded a fair hearing before the district governing board:

1) Was adequate and timely notice of the hearing given to the pupil?

2) Was the pupil, or the pupil's parent, guardian, or representative, if any, given the opportunity to hear and/or examine all evidence and/or witnesses submitted against him/her?

3) Was the pupil, or the pupil's parent or guardian given the opportunity to present evidence to deny, explain and/or mitigate the allegations against him/her?

c. Whether there was a prejudicial abuse of discretion by the district governing board:

1) Did school officials meet the procedural requirements of Article 1 (commencing with Section 48900) of Chapter 6 of Part 27 of the Education Code?

2) Was the decision to expel the pupil supported by the findings prescribed by Section 48915 of the Education Code?

3) Were the findings of the district governing board supported by substantial evidence as prescribed by Section 48922 of the Education Code?

d. Whether there exists relevant and material evidence which, in the exercise of reasonable diligence, could not have

been produced or was improperly excluded from the hearing before the district governing board?



L. If the County Board finds there was abuse of discretion by the local district governing board, the County Board must also find that the abuse of discretion was prejudicial in order to reverse the decision of the district governing board.

M. The decision of the County Board shall be final and binding upon the pupil and his/her parents or guardian, and upon the district governing board.

N. Where the County Board enters a decision reversing the district governing board, the County Board will determine whether to order the local district board to expunge the record of the pupil and the records of the district of any references to the expulsion action.

O. The final order of the County Board shall be in writing and shall be delivered to the pupil and his/her parents or guardian, and to the district governing board, by certified mail or personal service.

P. The Secretary shall maintain all records of the appeal as permanent records of the County Board of Education.

Adopted by Alameda County Board of Education 3/23/93
Amended and adopted by Alameda County Board of Education 2/25/97
Amended and adopted by Alameda County Board of Education 5/23/00.

# School Discipline and Special Education

Legal Services for Children

## General discipline of special education students

1. After a child with a disability "violates a code of conduct," school personnel suspend the student in the same manner as a student without a disability by removing the child from his or her current placement[1] for 10 school days or less. In California, no student can be suspended for more than 5 days unless they are being recommended for expulsion. Cal. Ed. Code § 48911(a). The school need not provide services during this short-term removal and need not make a manifestation determination (see below). 20 U.S.C. § 1415(k)(1)(B).

2. Once a student is removed for more than 10 cumulative school days in a given year, regardless of whether the removal is a *change in placement* (see below), the student must receive special education services during removal. Proposed Rules § 300.530(d).[2]

3. Notification: the parents must be notified of the decision to take disciplinary action and must be given a copy of the available procedural safeguards (see below) on or before the day the decision is made to take disciplinary action. 20 U.S.C. § 1415(k)(1)(H); Proposed Rules § 300.504(a), (h), 70 F.R. 35869.
    a. If the disciplinary action is a change in placement (see below), the parents must get "prior written notice"[3] of the decision, but it is not clear whether notice of a disciplinary action that is not a change in placement must be given in writing. 20 U.S.C. § 1415(b)(3). The parents must be notified of the available procedural safeguards in writing. 20 U.S.C. § 1415(d)(1).

## When discipline is a *change in placement*, there must be a *manifestation determination* and special education *services* must be provided

1. **Change in placement**.
    a. Any removal from placement for more than 10 consecutive school days is a change in placement. 20 U.S.C. § 1415(k)(1)(B); Proposed Rules § 300.536(a), 70 F.R. 35877.
    b. A pattern of removals for less than 10 school days each can constitute a change in placement. Removals are a pattern if 1) the removals total more than 10 school days in a school year; 2) the misconduct is "substantially similar to" the behavior resulting in the series of removals and these incidents, taken as a whole, are found to be a manifestation of the child's disability; and 3) additional factors such as length of each removal, total amount of time removed, and proximity of removals to one another. Proposed Rules § 300.536(b), 70 F.R. 35877.

2. **Manifestation determination**.
    a. A meeting to determine whether the child's behavior was a manifestation of his or her disability must occur within *10 school days* of a decision to make a change in placement. 20 U.S.C. § 1415(k)(1)(E)(i).
    b. The manifestation determination must be made by the parent, the school district, and relevant members of the IEP Team (determined by the parent and the district). 20 U.S.C. § 1415(k)(1)(E)(i).
    c. The group making the manifestation determination must review all relevant information in the student's file (including the IEP), any teacher observations, and any relevant information provided by the parent. 20 U.S.C. § 1415(k)(1)(E)(i).

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[1] "Current placement" is the placement identified in the student's IEP at the time of the misconduct. If the there is no IEP, the current placement is the child's actual placement at the time of the misconduct. *Thomas v. Cincinnati Bd. of Educ.*, 918 F.2d 618 (6th Cir. 1990).

[2] The regulations for the current version of the IDEA have not been finalized at the time this document was created in July 2005.

[3] *Prior written notice* must include: 1) a description of the action; 2) an explanation of why the district decided to take that action; 3) a description of each evaluation, procedure, assessment, record, or report used as a basis for the decision; 4) a statement that the parents are protected by procedural safeguards and how they can obtain a copy of the procedural safeguards; 5) resources for parents to get assistance to understand the procedural safeguards; 6) description of other options considered by the IEP Team and why they were rejected; and 7) a description of the factors relevant to the decision. Prior written notice must be in the native language of the parent unless it is clearly not feasible. Proposed Rules § 300.503(c), 70 F.R. 38569.

d. The behavior is a manifestation of the child's disability if: 1) the conduct was "caused by, or had a direct and substantial relationship to," the disability, or 2) the conduct was "the direct result" of the school district's "failure to implement the IEP." 20 U.S.C. § 1415(k)(1)(E)(i).

3. **If the behavior is a manifestation of the disability**, the IEP Team must:
   a. Conduct a functional behavioral assessment and implement a behavioral intervention plan. If a behavioral intervention plan was already developed before the misconduct, it must be modified to address the behavior. 20 U.S.C. § 1415(k)(1)(F).
   b. Return the child to the current placement, unless the parents and the district otherwise agree as a part of the behavioral plan or the student is in an interim placement as a result of committing a *zero tolerance offense* (see below). 20 U.S.C. § 1415(k)(1)(F); Proposed Rules § 300.530(f)(2), 70 F.R. 35875.

4. **If the behavior is not a manifestation of the disability**, regular disciplinary action may be taken.
   a. School personnel may consider "any unique circumstances on a case-by-case basis when determining whether to order a change in placement" when they have the authority to do so. 20 U.S.C. § 1415(k)(1)(A); Proposed Rules § 300.530(a), 70 F.R. 35874-75.
   b. *If appropriate*, a functional behavioral assessment must be conducted and behavioral intervention services must be provided whenever there is a change in placement, regardless of the outcome of the manifestation determination. 20 U.S.C. § 1415(k)(1)(D)(ii); Proposed Rules § 300.530(d)(1)(ii), 70 F.R. 35875. California law requires a functional behavioral assessment whenever the IEP Team determines that the IEP has been ineffective in controlling the child's behavior. 5 Cal. Code of Reg. 3052(b).
   c. A student in special education may not be suspended for more than 10 consecutive days unless the parent agrees, the student committed a zero tolerance offense (see below), or it is ordered by the court. Cal. Ed. Code § 48915.5(b); Proposed Rules § 300.536, 70 F.R. 35874-75.

5. **Services**. Regardless of whether the behavior was a manifestation of the disability, when a change in placement occurs or once a student has been suspended for more than 10 cumulative days in a school year, the student must continue to receive special education services, including behavioral intervention services, if appropriate. 20 U.S.C. § 1415(k)(1)(D); Proposed Rules § 300.530(d), 70 F.R. 35875.
   a. The student must receive educational services to enable him or her to continue participating in general education curriculum and to progress toward meeting IEP goals. 20 U.S.C. § 1415(k)(1)(D)(i); Proposed Rules § 300.530(d)(1)(i), 70 F.R. 35875.
   b. *If appropriate*, the district must provide a functional behavioral assessment and behavioral intervention services and modifications to address the behavior so it doesn't reoccur whenever a child has been removed for more than 10 cumulative days or a change in placement is made. 20 U.S.C. § 1415(k)(1)(D)(ii); Proposed Rules § 300.530(d)(1)(ii), 70 F.R. 38575.
   c. When child is removed for more than 10 cumulative days in a year but there is not a change in placement, "[s]chool personnel, in consultation with the child's special education teacher," determine what services are needed. Proposed Rules § 300.530(d)(4), 70 F.R. 35875. When there is a change in placement and the behavior was not a manifestation of the disability, the IEP Team must determine what services are necessary to enable the student to progress in the general curriculum and appropriately advance toward IEP goals. Proposed Rules § 300.530(d)(5), 70 F.R. 35875.
   d. If educational services would be provided for students without disabilities during suspension for less than 10 days, a student with a disability must receive special education services. Proposed Rules § 300.530(d)(3), 70 F.R. 35875.

**Zero tolerance offenses & Interim placements**

1. Regardless of whether the behavior was a manifestation of the disability, a student who committed a zero tolerance offense may be removed to an interim alternative educational setting (interim placement) for 45 school days. 20 U.S.C. § 1415(k)(1)(G). An interim placement is another school that provides comparable services.

2. Even if the student did not commit a zero tolerance offense, the district may file for a due process hearing (see below) to request that the student be removed to an interim placement when the district believes that staying in the current school is substantially likely to result in injury to the student or others. 20 U.S.C. § 1415(k)(3)(A). The hearing officer may remove the child to an interim placement for not more than 45 school days if he or she agrees that it would be dangerous for the child to stay in his or her current school. 20 U.S.C. § 1415(k)(3)(B)(ii)(II). The district may repeat this process if it believes the child would be "dangerous" if returned to the original school. Proposed Rules § 300.532(b)(3), 70 F.R. 35876.

3. **Zero tolerance offenses**: 20 U.S.C. § 1415(k)(1)(G).
   a. Carrying or possessing a weapon at or to school premises or at or to a school function.
      A *weapon* is: "a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that [a weapon] does not include a pocket knife with a blade of less than 2 1/2 inches in length." 18 U.S.C. § 930(g)(2).
   b. Selling or soliciting the sale of a controlled substance while at school, on school premises, or at a school function.
      A *controlled substance* is any substance listed in schedules I-V of the Controlled Substances Act.[4] This list includes all substances categorized as "controlled" under the CSA, including illegal drugs and many prescription medications.
   c. Knowingly possessing or using illegal drugs while at school, on school premises, or at a school function.
      *Illegal drugs* are all controlled substances except those legally possessed by the student, such as a medication that the student has a prescription for.
   d. Inflicting serious bodily injury on another person while at school, on school premises, or at a school function.
      *Serious bodily injury* requires a showing of a "substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty." 18 U.S.C. § 1365(h)(3).
4. The IEP Team decides what the interim placement is. 20 U.S.C. § 1415(k)(2); Proposed Rules § 300.531, 70 F.R. 35876.

**Students not yet eligible for special education services**

1. Students who have not yet been evaluated receive the same protections and special education services if the school district had knowledge that the student had a disability before the misconduct. 20 U.S.C. § 1415(k)(5)(A).

2. If the district did *not* have knowledge, the child may be disciplined in the same manner as a child without a disability.
   a. *Exception*: if the district did not have knowledge but a request for assessment[5] is made while disciplinary measures are in effect, the child must be evaluated in an expedited manner. "Expedited" is not defined. All assessments must be completed within 50 days of a request, so this expedited evaluation should be completed in significantly less than 50 days. If the child is determined to have a disability, the district must provide special education services after 10 days of removal, but the child remains in the disciplinary placement (including suspension or expulsion without services) during the evaluation process. 20 U.S.C. § 1415(k)(5)(D)(ii); Proposed Rules § 300.534(d)(2), 70 F.R. 35876.

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[4] A complete list of the current controlled substances can be found in 21 U.S.C. § 812(c).
[5] The parent may request an assessment by sending a letter to the school administrator responsible for receiving these requests.

3. **Knowledge.**
   a. The school district had knowledge that the child had a disability if:
      i. The parent has expressed concern *in writing* to appropriate supervisory or administrative personnel or to the student's teacher that the student needs special education. 20 U.S.C. § 1415(k)(5)(B).
      ii. The parent has requested an initial assessment of the student to determine if she qualifies for special education services. 20 U.S.C. § 1415(k)(5)(B). Federal law does not specifically require an assessment request to be in writing, but California law does require requests to be in writing. Cal. Ed. Code § 56029.
      iii. The teacher or other personnel have expressed specific concerns about a pattern of behavior that may indicate that the child has a disability directly to the director of special education or other supervisory personnel of the school district using established procedures. 20 U.S.C. § 1415(k)(5)(B); Proposed Rules § 300.534(b)(3), 70 F.R. 35876.
   b. The district does *not* have knowledge if the parent has refused to allow an evaluation of the child, the parent has refused services, or the child was already tested and determined not to have a disability. 20 U.S.C. § 1415(k)(5)(C).

**Referral to law enforcement**

1. The IDEA does not prohibit reporting a crime committed by a student with a disability to law enforcement and does not prevent law enforcement or judicial authorities from taking action against a child with a disability who has committed a crime.
2. If the district or other agency reports a crime committed by a child with a disability, they must also forward copies of disciplinary and special education records for consideration. 20 U.S.C. § 1415(k)(6)(B). The transmission of records is allowed only to the extent permitted by the Family Educational Rights and Privacy Act, which allows transmission only if the school has parental consent or a court order, or transmission is immediately necessary for safety. Proposed Rules § 300.535(b)(2), 70 F.R. 35877.

**Procedural Safeguards**

1. **Due Process Hearings**: The parent can appeal the outcome of the manifestation determination or any change in placement, and by the school district if it believes that maintaining the current placement is substantially likely to result in injury to the student or others.
   a. *Placement during the appeal.*
      i. The student must "stay put" in his or her current placement pending a due process hearing or mediation unless his parents and the district agree in writing or the student committed a zero tolerance offense. 20 U.S.C. § 1415(j); Proposed Rules § 300.518(a), 70 F.R. 35874.
      ii. If the student is in an interim placement for a zero tolerance offense, she remains in the interim placement only until the expiration of the interim placement or the decision of the hearing officer, whichever occurs first, unless parents and state or school district otherwise agree. Cal. Ed. Code § 56505(d); 20 U.S.C. § 1415(k)(4); Proposed Rules § 300.533, 70 F.R. 35876.
   b. *Timeline for due process hearings.*
      i. If the dispute involves a disciplinary change in placement or a manifestation determination: the hearing must occur within 20 school days of the request a decision must be made within 10 school days of the hearing. 20 U.S.C. 5(k)(4)(B).
      i her disputes, the decision of the hearing officer must be mailed within 45 fter the end of the 30-day resolution process (see below), which means on must be mailed 75 days after the request for a hearing. Proposed 300.515(a), 70 F.R. 35873. The hearing officer may grant specific ns at the request of either party. Proposed Rules § 300.515(c), 70 F.R.

c. *Mediation.*
   i. The parent or district may request mediation regardless of whether a due process hearing has been requested. [6] 20 U.S.C. § 1415(e)(1); Cal. Ed. Code § 56501(b)(2). Under California law, neither party may be represented by an attorney at a mediation conference before a due process hearing is requested, but attorneys can attend a mediation scheduled after a due process hearing request. Cal Ed. Code §§ 56500.3(a), 56501(b)(2).
   ii. If a parent or school does not agree to mediation, the district or state may offer an opportunity to meet with a disinterested party to encourage the use of mediation. 20 U.S.C. § 1415(e)(2)(B).
   iii. The mediation process must be voluntary, conducted by a "qualified and impartial mediator who is trained in effective mediation techniques," and cannot be a prerequisite for a due process hearing. 20 U.S.C. § 1415(e)(2)(A). Mediation cannot be used to delay the due process hearing, but if the parent requests a due process hearing and refuses to participate in mediation, the timeline will be delayed until the resolution session (see below) is held. 20 U.S.C. § 1415(e)(2)(A); Proposed Rules § 300.510(b)(3), 70 F.R. 35871.
   iv. The state may require the parties to sign a confidentiality pledge prior to mediation. Proposed Rules § 300.506(b)(9), 70 F.R. 35870. Discussions in mediation are confidential and cannot be used as evidence in due process hearings or civil proceedings. 20 U.S.C. § 1415(e)(2)(G); Proposed Rules § 300.506(b)(8), 70 F.R. 35870.
   v. The state bears the cost of mediation. 20 U.S.C. § 1415(e)(2)(D); Proposed Rules § 300.506(b)(4), 70 F.R. 35870.
   vi. Mediation agreements are legally binding, confidential, and enforceable in court. 20 U.S.C. § 1415(e)(2)(F). A copy of the written agreement must be mailed to both parties within 10 days. Cal. Ed. Code § 56500.3(f).

d. *Requesting a due process hearing.*
   i. A due process hearing may be requested by a parent who disagrees with any placement decision or manifestation determination OR by the school district if it believes that maintaining the current placement is substantially likely to result in injury to the student or others. 20 U.S.C. § 1415(k)(3)(A). A student may only request a hearing if 1) he or she is emancipated or 2) he or she is a ward or dependent of the court, no parent is known or can be found, and no educational surrogate has been appointed. Cal. Ed. Code § 56501(a).
   ii. A hearing must be requested within 3 years of the time when the requesting party knew or should have known of the disputed decision. 20 U.S.C. § 1415(f)(3)(C), Cal. Ed. Code § 56043(p). The statute of limitations does not apply if the parent was prevented from requesting a hearing because of specific misrepresentations by the district that it had resolved the problem, or because the district withheld information that it was required to give to the parent. 20 U.S.C. § 1415(f)(3)(D).
   iii. The state must inform the parent of any free or low-cost legal or other relevant services that are available when the parent requests a due process hearing or when the parent or district requests the information. Proposed Rules § 300.507(b), 70 F.R. 35870.
   iv. *Prior written notice* of a request for a hearing must be provided to the other party. Notice includes: name and address of child (any available contact information if the child is homeless), school, description of the problem and facts, proposed resolution, and state procedures. 20 U.S.C. § 1415(c)(1).
      1. The party receiving notice of the hearing must respond within 10 days after receiving the notice specifically addressing the issues in the complaint. 20 U.S.C. § 1415(c)(2)(B)(ii). If the parent requests the hearing and the district has not already sent prior written notice about

[6] Under California law, a request for pre-due process mediation must be made in writing to the county superintendent, who must schedule a conference within 15 days of the request. Cal Ed. Code § 56500.3(d)-(e). The conference must be completed within 30 days of the request unless both parties agree. Cal Ed. Code § 56500.3(e). If a due process hearing has been requested, the Special Education Hearing Office will assign a mediator and schedule a conference.

the subject matter of the complaint (see above), the district response must explain: why the district proposed or refused the action giving rise to the parent's complaint, other options the IEP Team considered and why they were rejected, the basis for the decision, and factors relevant to the decision. 20 U.S.C. § 1415(c)(2)(B)(i). The district may still challenge the sufficiency of the parent's notice even if the district provides this information. 20 U.S.C. § 1415(c)(2)(B)(i)(II); Proposed Rules § 300.508(e)(1)(iv), 70 F.R. 35871.

2. The notice is considered sufficient unless the receiving party notifies the hearing officer of insufficiency within 15 days of receiving the complaint. 20 U.S.C. § 1415(c)(2)(A), (C). The hearing officer must decide if the notice is sufficient within 5 days. 20 U.S.C. § 1415(c)(2)(D).
3. If the notice is insufficient, it can be amended if 1) the other party agrees in writing and is given the opportunity to participate in a resolution session or 2) the hearing officer grants permission to amend at least 5 days before the hearing. 20 U.S.C. § 1415(c)(2)(E)(i). The timeline for the due process hearing begins again when the amended complaint notice is filed. 20 U.S.C. § 1415(c)(2)(E)(ii).

e. *Resolution session.*
   i. The district must convene a "resolution session" prior to a due process hearing unless the parent and the school district agree in writing to waive the meeting or agree to mediation. 20 U.S.C. § 1415(f)(1)(B). The session must include the parent, a representative of the district with decisionmaking authority, and relevant members of the IEP Team who have "specific knowledge of the facts identified in the complaint." 20 U.S.C. § 1415(f)(1)(B). The parent and the district determine the relevant members of the IEP Team. Proposed Rules § 300.510(a)(4), 70 F.R. 35871.
   ii. The resolution session must be conducted within 15 days of the request for a hearing, and the complaint must be resolved within 30 days or a due process hearing may occur. 20 U.S.C. § 1415(f)(1)(B)(i)-(ii); Proposed Rules § 300.510(b), 70 F.R. 35871. If the due process hearing is expedited (see above), the resolution session must be conducted within 7 days of the request, and the due process hearing may be held if no agreement is reached within 15 days of the request. Proposed Rules § 300.532(c)(3), 70 F.R. 35876.
   iii. The state bears the cost of the resolution session. 20 U.S.C. § 1415(e)(2)(D).
   iv. The school district's attorney may not attend unless the parent is accompanied by an attorney. 20 U.S.C. § 1415(f)(1)(B)(i)(IV).
   v. If a successful resolution is reached, a binding written settlement agreement must be developed and is enforceable in court. The agreement may be voided by either party within 3 business days. 20 U.S.C. § 1415(f)(1)(B)(iii).

f. *Due process hearing procedures.*
   i. Before the hearing:
      1. If the parent will be represented by an attorney at the hearing, he or she must notify the district at least 10 days before the hearing. Cal. Ed. Code § 56507(a).
      2. Each party must disclose all completed evaluations and recommendations it intends to use at the hearing at least 5 days before the hearing. 20 U.S.C. § 1415(f)(2)(A). If the information is not disclosed, the hearing officer may bar the party from using the information at the hearing unless the other party agrees. 20 U.S.C. § 1415(f)(2)(B). If the hearing is expedited (see above), the state may shorten this disclosure requirement to not less than 2 business days. Proposed Rules §§ 300.512(a)(3), 300.532(c)(4), 70 F.R. 35872, 35876.

ii. At the hearing:
1. Each party has the right to be represented by an attorney. 20 U.S.C. § 1415(h)(1).
2. Each party has the right to present evidence, compel witnesses to attend, and to question and cross-examine witnesses at the hearing. 20 U.S.C. § 1415(h)(2).
3. The party that requested the due process hearing cannot raise any issue not explained in the prior written notice unless the other party consents. 20 U.S.C. § 1415(f)(3)(B).

iii. Due process hearing officers must have the knowledge and ability to understand state and federal statutes and case law, to conduct hearings, and to write appropriate decisions following standard legal practice. 20 U.S.C. § 1415(f)(3)(A)(i). Hearing officers must not be employees of the district or state education department and must not have a personal or professional conflict of interest. 20 U.S.C. § 1415(f)(3)(A)(ii). The mere fact that the state pays the hearing officer to conduct the hearing does not make him or her an employee of the state. Proposed Rules § 300.511(c)(2).

g. *Outcome of the due process hearing.*
i. The hearing officer can order a change of placement:
1. To return a child to the placement from which he or she was removed if he or she determines that the district did not have the authority to remove the child or the behavior was a manifestation of the child's disability. 20 U.S.C. § 1415(k)(3)(B)(ii); Proposed Rules § 300.532(b)(2)(i), 70 F.R. 38676.
2. To remove the child to an interim placement for not more than 45 school days if the hearing officer determines that the current placement is substantially likely to result in injury to the student or others. 20 U.S.C. § 1415(k)(3)(B)(ii).

ii. The decision of the hearing officer should be made on substantive grounds based on whether the child has been denied a free, appropriate public education. The hearing officer may only find a denial of FAPE based on a procedural violation if the violation 1) impeded the child's right to FAPE, 2) significantly impeded the parents' opportunity to participate in decisions regarding FAPE, or 3) caused a deprivation of educational benefits. The hearing officer may always order the district to comply with procedural requirements in the future. 20 U.S.C. § 1415(f)(3)(E).

iii. The decision of the hearing officer is final, but the decision may be appealed within 90 days in a civil action in state or federal court. 20 U.S.C. § 1415(i)(2), Cal. Ed. Code § 56505(k).

iv. Each party has the right to receive a written verbatim record of the hearing. The record may be in electronic form at the option of the parents. 20 U.S.C. § 1415(h)(3).

v. Each party has the right to receive written findings of fact and decisions. The findings may be in electronic form at the option of the parents. This decision must be given to the state advisory panel and must be available to the public with the identifying information redacted. 20 U.S.C. §§ 1415(h)(4), 1417(c).

2. **Attorneys' fees in civil actions.**
a. The court may award reasonable attorneys' fees to the parent if the parent is the prevailing party. 20 U.S.C. § 1415(i)(3)(B)(i)(I). There are various limitations on what fees may be awarded. *See* 20 U.S.C. § 1415(i)(3).
b. The court may award attorneys' fees to the district when it is the prevailing party in limited circumstances:
i. The parent's *attorney* only is liable for fees when the parent filed a complaint or civil action that was, or continued to litigate an action that clearly became, "frivolous, unreasonable, or without foundation." 20 U.S.C. § 1415(i)(3)(B)(i)(II).
ii. The parent *and* the parent's attorney are liable for fees when the complaint or civil action was filed for an "improper purpose, such as to harass, to cause

unnecessary delay, or to needlessly increase the cost of litigation." 20 U.S.C. § 1415(i)(3)(B)(i)(III).

3. **Notice of procedural safeguards.**
   a. Notice of procedural safeguards must be given to parents once per year, when the initial referral for evaluation is made, when the parent requests an additional copy, when the parent initiates a due process hearing, and when the school takes disciplinary action after the student violates a code of conduct. 20 U.S.C. § 1415(d)(1)(A), (k)(1)(H); Proposed Rules § 300.504(a), (h), 70 F.R. 35869. The state may post the procedural safeguards on an internet website. 20 U.S.C. § 1415(d)(1)(B).
   b. Notice of procedural safeguards must be in the native language of the parents and must include information about all available procedural safeguards. 20 U.S.C. § 1415(d)(2)(A); Proposed Rules § 300.504(c)(5)(iii), 70 F.R. 35870. Notice must include information about:
      i. Parents' right to an independent educational evaluation;
      ii. Parents' right to prior written notice of a change or refusal to change the placement or the provision of programs or services;
      iii. Parents' right to consent before the child is evaluated or provided services;
      iv. Parent's right to access to educational records;
      v. The parent's right to request a due process hearing, including information about the statute of limitations, the opportunity of the district to resolve the complaint, the availability of mediation, and the difference between a compliance complaint and a due process hearing;
      vi. The child's right to "stay put" in her current placement during pendency of due process proceedings, and the limitations on "stay put";
      vii. Procedures districts must follow for students who are put into an interim placement;
      viii. What is required for the district to pay for parents' unilateral placement of the child in a private school;
      ix. The procedures relating to due process hearings, including the requirement of disclosure at least five days before the hearing of all evaluation results and recommendations a party intends to use;
      x. The right to appeal the due process hearing decision in court;
      xi. The availability of attorneys' fees.

**Sources:**

*Special Education Rights and Responsibilities*, Community Alliance for Special Education & Protection and Advocacy, Inc., Ninth Edition, Revised April 2003.

*The Reauthorized IDEA and Significant Judicial Decisions*, California Department of Education, April 2005.

*Special Education Rights of Parents and Children under the IDEA, Part B: Notice of Procedural Safeguards*, California Department of Education, Revised February 2004.

Opinion No. 97-903—December 5, 1997

Requested by: MEMBER OF THE CALIFORNIA STATE ASSEMBLY

Opinion by: DANIEL E. LUNGREN, Attorney General
Gregory L. Gonot, Deputy

THE HONORABLE DICK MONTEITH, MEMBER OF THE CALIFORNIA STATE ASSEMBLY, has requested an opinion on the following question:

May a school district adopt a "zero tolerance" policy mandating expulsion of a student for a first offense involving the possession of a controlled substance or alcohol?

## CONCLUSION

A school district may not adopt a "zero tolerance" policy mandating expulsion of a student for a first offense involving the possession of a controlled substance or alcohol. Such an automatic expulsion policy would contravene state law as explicitly determined by the Legislature.

## ANALYSIS

The Legislature has enacted a comprehensive statutory scheme (Ed. Code, §§ 48900–48926)[1] governing the suspension and expulsion of pupils from elementary and secondary schools. "Suspension" is defined as the "removal of a pupil from ongoing instruction for adjustment purposes . . ." (§ 48925, subd. (d)), is limited to five consecutive days (§ 48911, subd. (a)), and may be imposed by the school principal or the district superintendent on the basis of an informal conference with the pupil (§ 48911 subd. (b)). "Expulsion" is the "removal of a pupil from (1) the immediate supervision and control, or (2) the general supervision, of school personnel . . . ." (§ 48925, subd. (b).) Expulsion, as the most drastic measure a school district may take in response to student offenses, "must be exercised with great care." (57 Ops.Cal.Atty.Gen. 439, 441 (1974).)[2]

We are asked whether a school district may adopt a "zero tolerance" policy requiring the expulsion of any student who commits a controlled substance or alcohol possession offense, even if the student has no prior record. We conclude that such an automatic expulsion policy would contravene state law.

Expulsion requires a hearing for the pupil and his or her parent or guardian before the governing board of the school district (§ 48918, subd. (a)), a hearing officer, or administrative panel (§ 48918, subd. (d)) within 30 schooldays from the date of the expulsion recommendation made by the school principal or the district superintendent (§ 48918, subd.

[1] All section references herein are to the Education Code.

[2] In 80 Ops.Cal.Atty.Gen. 85, 87–88 (1997), we concluded that a school district may suspend the enforcement of an expulsion order.





(a)), a hearing officer, or administrative panel (§ 48918, subd. (d)) within 30 schooldays from the date of the expulsion recommendation made by the school principal or the district superintendent (§ 48918, subd. (a)) and may be appealed to the county board of education (§ 48919).

The offenses that may result in expulsion—including expulsion for the possession, use, sale, or provision of a controlled substance or an alcoholic beverage or intoxicant—are set forth in section 48900:

> "A pupil may 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:
>
> " . . . . . .
>
> "(c) Unlawfully possessed, used, sold, or otherwise furnished, or been under the influence of any controlled substance . . . , an alcoholic beverage, or an intoxicant of any kind.
>
> " . . . . . "

With specific regard to expulsions for offenses involving controlled substances or alcohol, section 48915 provides:

> "(a) Except as provided in subdivision[] (c) . . . , 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 finds that expulsion is inappropriate, due to the particular circumstance:
>
> " . . . . . .
>
> "(3) Unlawful possession of a controlled substance . . . , except for the first offense for the possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis.
>
> " . . . . . .
>
> "(b) 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 committed an act listed in subdivision (a) or in subdivision . . . (c) . . . of section 48900. A decision to expel 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.

"(c) The principal or superintendent of schools shall immediately suspend . . . 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:

"

"(3) Unlawfully selling a controlled substance . . . .

"

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

" "

Section 48914 requires the governing board of each school district to establish rules and regulations governing procedures for the expulsion of pupils.

The proposed zero tolerance policy, as contemplated in the question presented, would call for the principal or superintendent to recommend expulsion of a student for the first instance of any of the offenses involving controlled substances or alcohol, and for the district board to decide in favor of the recommended action by finding either that "[o]ther means of correction are not feasible" (§ 48915, subd. (b)(1)) or that "[d]ue to the nature of the act, the presence of the pupil causes a continuing danger to the physical safety of the pupil or to others" (§ 48915, subd. (b)(2)). Drug and alcohol offenses would be treated as automatically meeting one of these criteria.

A school district may, it is argued, reasonably conclude that because of an intractable and ongoing drug problem at its schools, other means of correction are not feasible, particularly where notwithstanding repeated and emphatic warnings against student involvement with drugs and alcohol, the pupil has knowingly violated the rules. It is also argued that because of the impaired physical and mental state that drugs and alcohol can produce, particularly in impressionable young persons who are not fully cognizant of their limits, the nature of the offense is such that the presence of a pupil who has knowingly violated the zero tolerance policy represents a continuing danger to the physical safety of other pupils. Thus, it is contended that any violation of the zero tolerance policy may be treated by the district





board as satisfying one or both of the criteria set forth in section 48915, subdivision (b).

In effect, the proposed zero tolerance policy would mean that the principal, the superintendent, and the district board must treat the first offense as leading inexorably to expulsion because the district has concluded that any drug or alcohol offense inherently meets the criteria of section 48915, subdivision (b). As part of the zero tolerance policy, all students would be given explicit warning as to the consequences of a violation. The deterrent effect of the policy would be based upon the students' knowledge that the first instance of any of the offenses involving controlled substances or alcohol would, without exception, result in expulsion.

In determining whether the proposed local school policy would be consistent with state law, we look to well-established principles of statutory construction when interpreting the controlling language of sections 48900–48926. As explained by the Supreme Court in *Dyna-Med., Inc. v. Fair Employment and Housing Com.* (1987) 43 Cal.3d 1379, 1386–1387:

> "Pursuant to established principles, our first task in construing a statute is to ascertain the intent of the Legislature so as to effectuate the purpose of the law. In determining such intent, a court must look first to the words of the statute themselves, giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose. A construction making some words surplusage is to be avoided. The words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible. [Citations.] Where uncertainty exists consideration should be given to the consequences that will flow from a particular interpretation. [Citation.] Both the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent. [Citation.]"

Initially, we observe that section 48915 identifies one situation in which an offense involving controlled substances *must* result in expulsion. The principal or superintendent "shall" immediately suspend and "shall" recommend expulsion of a pupil who he or she determines has committed the act of unlawfully selling a controlled substance at school or at a school activity off school grounds. (§ 48915, subd. (c)(3).) The governing board of the district "shall" order such pupil expelled upon findin[illegible] the pupil

did commit the offense in question. (§ 48915, subd. (d).) Expulsion is also mandated for three other offenses that directly involve physical safety.[3] Non-sale offenses involving controlled substances require that the principal or superintendent "recommend" expulsion, unless the responsible official "finds that expulsion is inappropriate, due to the particular circumstance." (§ 48915, subd. (a).) This legislative directive, however, does not apply to "the first offense for the possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis." (§ 48915, subd. (a)(3).)

The district board "may," upon recommendation of the principal or the superintendent, order a pupil expelled upon finding that the pupil committed one of the acts in question. (§ 48915, subd. (b).) However, as noted previously, such decision must be based upon a finding that other means of correction are not feasible or have repeatedly failed to bring about proper conduct (§ 48915, subd. (b)(1))[4] or that, due to the nature of the act, the presence of the pupil would cause a continuing danger to the physical safety of the pupil or others. (§ 48915, subd. (b)(2).)

With regard to the finding set forth in subdivision (b)(1) of section 48915, the district would necessarily rely on a lack of success in utilizing other means of correction for drug and alcohol offenses. We believe such past experience must be with respect to the particular pupil whose expulsion proceeding is before the district. For example, a pupil whose record suggests a tractable nature or who demonstrates genuine remorse for his or her actions may be suspended (§ 48900.5) or required to perform community service on school grounds during nonschool hours (§ 48900.6). A finding under subdivision (b)(1) of section 48915 that does not take into account individualized circumstances may deny the pupil's right to due process. (See *Garcia* v. *Los Angeles County Bd. of Education* (1981) 123 Cal.App.3d 807, 810–813.)

Under subdivision (b)(2) of section 48915, the inquiry is whether, in view of the nature of the act, the continued presence of the pupil would pose a risk to the physical safety of the pupil or others. This finding, with its focus on the nature of the act, lends itself to a more categorical approach. However, a rational connection must still be made between the presence of the student on campus and a continuing danger to the physical safety of the pupil or others. (See *Tot* v. *U.S.* (1943) 319 U.S. 463, 466–468;

[3] These offenses are: possessing, selling, or otherwise furnishing a firearm; brandishing a knife at another person; and committing or attempting to commit a sexual assault or committing a sexual battery. § 48915, subd. (c)(1), (2), (4).)

[4] As we are concerned here with first offenses, the second clause of section 48915, subdivision (b)(1) would not, as a practical matter, be available as a basis for the district's decision to expel.





*Rafaelli* v. *Committee of Bar Examiners* (1972) 7 Cal.3d 288, 291–301; *Mike Moore's 24-Hour Towing* v. *City of San Diego* (1996) 45 Cal.App.4th 1294, 1306.) Drug or alcohol use by its very nature poses a danger to the physical safety of the user, particularly if the user is a minor. Those who must interact with one who uses drugs or alcohol may also be at risk as to their physical safety. However, it would be difficult to conclude that the offending pupil must be removed from the school in order to avert a continuing danger to his or her physical safety or that of other pupils *in all cases.*

Leaving aside questions of arbitrariness and lack of evidentiary support, the fatal flaw we find in the proposed policy is that it is in conflict with the Legislature's determination that mandatory expulsion is for the most serious offenses, namely, possessing, selling, or otherwise furnishing a firearm; brandishing a knife at another person; unlawfully selling a controlled substance; or committing or attempting to commit a sexual assault or battery. (§ 48915, subd. (c).) Indeed, the Legislature does not even direct consideration of expulsion for all drug offenses; it excepts from such administrative action a first offense possession of one ounce or less of marijuana. (§ 48915, subd. (a)(3).)[5] Other than with respect to the four extremely serious offenses listed in section 48915, subdivision (c)(3), a district may not refuse to exercise the discretionary authority granted to it under the statutory scheme.

Instead, the Legislature intended a case-by-case application of the criteria set forth in section 48915, subdivision (b), since an expulsion results in such serious consequences for the student and for the district in terms of the alternative educational arrangements that must be made for the expelled student. (See § 48916.) We also note that the use of an automatic approach in dealing with drug and alcohol offenses would make subdivision (b)(2) of section 48915 virtually meaningless. If every drug or alcohol possession offense may be deemed to cause a continuing danger to the physical safety of the pupil or others, so also may the other offenses listed in subdivision (a) of section 48915, since they involve the infliction of physical injury

[5] We also note that the Legislature has explicitly recognized suspension as an appropriate disciplinary measure for a first offense involving a controlled substance or alcohol. Section 48900.5 provides in part as follows:

> "Suspension shall be imposed only when other means of correction fail to bring about proper conduct. However, a pupil . . . may be suspended 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 or property or threatens to disrupt the instructional process."

or the threat thereof. In order for subdivision (b)(2) of the statute to have any real significance, the offenses least likely to produce a direct physical threat (e.g., a first time alcohol possession offense) must be viewed as eligible for diversion of the student into disciplinary channels other than expulsion. To remove offenses from consideration of non-expulsion disciplinary action simply because they involve drugs or alcohol would make such offenses subject to harsher treatment than, for example, causing serious physical injury to a pupil in a schoolyard gang attack. The Legislature has already decided that only one particular drug offense warrants mandatory expulsion—the sale of a controlled substance. (§ 48915, subd (d).) A school district may not undermine such legislative determination in fashioning its own mandatory expulsion policy.

Accordingly, we conclude that a school district's proposed zero tolerance policy which would mandate expulsion for a first offense involving possession of a controlled substance or alcohol would be inconsistent with state law governing expulsions of school students and therefore may not be adopted by a school district.

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**Opinion No. 97-506—December 23, 1997**

Requested by: DISTRICT ATTORNEY, COUNTY OF SANTA BARBARA

Opinion by: DANIEL E. LUNGREN, Attorney General
Anthony Da Vigo, Deputy

THE HONORABLE THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY, COUNTY OF SANTA BARBARA, has requested an opinion on the following questions:

1. May a district attorney order a deputy district attorney to submit to an individual suspicion-based drug test in the absence of a preestablished policy respecting such testing?

2. Would the establishment by a district attorney of a policy respecting individual suspicion-based drug testing of deputy district attorneys be the subject of mandatory collective bargaining negotiations?

CONCLUSIONS

1. A district attorney may order a deputy district attorney to submit to an individual suspicion-based drug test in the absence of a preestablished policy respecting such testing.

(Matthew Bender & Co., Inc.)

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA

No. 96-501

1997 Cal. AG LEXIS 19

April 24, 1997

REQUESTBY: [*1]

DANIEL E. LUNGREN, Attorney General (ANTHONY M. SUMMERS, Deputy Attorney General)

OPINION:

THE HONORABLE KERRY MAZZONI, MEMBER OF THE CALIFORNIA ASSEMBLY, has requested an opinion on the following questions:

1. May a school district suspend the enforcement of an expulsion order if the pupil has committed one of the offenses for which expulsion must be ordered?

2. In taking final action to expel a pupil, must the governing board disclose the pupil's name and the cause for the expulsion?

CONCLUSIONS

1. A school district may suspend the enforcement of an expulsion order even when the pupil has committed one of the offenses for which expulsion must be ordered.

2. In taking final action to expel a pupil, the governing board must disclose the pupil's name and the cause for the expulsion.

ANALYSIS:

The Legislature has enacted a comprehensive statutory scheme (Ed. Code, §§ 48900-48926) n1 governing the suspension and expulsion of pupils from public elementary and secondary schools. "Suspension" is the "removal of a pupil from ongoing instruction for adjustment purposes . . . ." (§ 48925, subd. (d).) "Expulsion" is the "removal of a pupil from (1) the immediate supervision and control, or (2) [*2] the general supervision, of school personnel . . . ." (§ 48925, subd. (b).)

n1 All references hereafter to the Education Code are by section number only.

The focus of the two questions presented for resolution is the expulsion of a pupil under the terms of section 48915. Section 48915 provides:

"(a) 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 finds that expulsion is inappropriate, due to the particular circumstance:

". . . .

"(b) 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 committed an act listed in subdivision (a) or in subdivision (a), (b), (c), (d), or (e) of Section 48900. A decision to expel shall be based on a finding of one or both of the following:

". . . .

"(c) The principal or superintendent of schools shall immediately suspend, pursuant to Section [*3] 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

"(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.

"(d) 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: [*4]

"(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 schoolsite attended by the pupil at the time of suspension.

"(e) 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:

". . . ."

Sections 48900, 48900.2, 48900.3, and 48900.4 list numerous acts for which a pupil may be suspended or recommended for expulsion. Section 48911 sets forth the procedures to be followed in suspending a pupil.

1. Suspension of Expulsion Order Required By Law

We are first asked whether a school district may suspend the enforcement of an expulsion order that is required by law (§ 48915, subd. (d)). We conclude that it may.

For committing [*5] one of the offenses described in subdivision (c) of section 48915, a pupil is to be "immediately suspended," and the principal or superintendent "shall recommend expulsion." Under subdivision (d) of the statute, "the governing board shall order [the] pupil expelled upon finding that the pupil committed an act listed in subdivision (c) . . . ." "Shall" is clearly mandatory in this context, where the Legislature has also used the permissive term "may" (see, e.g., § 48915, subd. (b), (e)). (See *Forster v. Superior Court (1992) 11 Cal.App.4th 782, 791* ["since the Legislature used the words both 'shall' and 'may' in the different subdivisions . . . , it presumably did so to distinguish between mandatory and directory provisions"].)

While we have indicated that expulsion is the "removal of a pupil from (1) the immediate supervision and control, or (2) the general supervision of school personnel," (§ 48925, subd. (b)), numerous acts must take place before a pupil is removed from school supervision, including: (1) commission of the offense, (2) recommendation of expulsion, (3) determination that the offense was committed, (4) the vote to expel, (5) issuance of the order of expulsion, [*6] and (6) enforcement of the order of expulsion. The mandate of subdivision (d) of section 48925 is that the governing board must "order a pupil expelled." Voting and issuance of an expulsion order are different from the enforcement of the order.

Whether an order of expulsion must be enforced or may be suspended is determined by a different statute, section 48917. Subdivision (a) of section 48917 provides:

"The governing board, upon voting to expel a pupil, may suspend the enforcement of the expulsion order for a period of not more than one calendar year and may, as a condition of the suspension of enforcement, assign the pupil to a school, class, or program that is deemed appropriate for the rehabilitation of the pupil."

Under section 48917 an expulsion order may be suspended in its enforcement if specified conditions are met.

We are to interpret statutes so as to harmonize their various purposes. "'A statute must be construed "in the context of the entire statutory scheme of which it is a part, in order to achieve harmony among the parts."'" (*People v. Hull (1991) 1 Cal.4th 266, 272.*) "'Statutes or statutory sections relating to the same subject must be harmonized, [*7] both internally and with each other, to the extent possible.'" (*Walnut Creek Manor v. Fair Employment & Housing Com. (1991) 54 Cal.3d 245, 268.*)

Section 48915 deals with a board's vote to expel, while section 48917 concerns the enforcement of an expulsion order. As indicated in the latter statute, the enforcement of an expulsion order may be suspended and the pupil assigned "to a school, class, a program that is deemed appropriate for the rehabilitation of the pupil." In this manner sections 48915 and 48917 are harmonized, and each is given effect. Neither supersedes the other.

We thus conclude in answer to the first question that a school district may suspend the enforcement of an expulsion order even when the pupil has committed one of the offenses for which expulsion must be ordered.

2. Disclosure of the Pupil's Name and Offense

The second question presented is whether a pupil's name and the offense committed must be disclosed to the public when the pupil is ordered expelled. We conclude that disclosure is required.

Section 48918 provides several procedural methods for conducting a hearing to determine whether a pupil should be expelled. The hearing may be conducted by [*8] the governing board, a hearing officer, or an administrative panel. If the hearing is conducted by a hearing officer or administrative panel, findings of fact and a recommendation must be submitted to the governing board. (§ 48918, subd. (f).)

With respect to whether the governing board must disclose a pupil's name and the cause for expulsion, section 48918 provides:

"The governing board of each school district shall establish rules and regulations governing procedures for the expulsion of pupils. These procedures shall include, but are not necessarily limited to, all of the following:

"...

"(c) . . . the governing board shall conduct a hearing to consider the expulsion of a pupil in a session closed to the public, unless the pupil requests, in writing, at least five days prior to the date of the hearing, that the hearing be conducted at a public meeting. Regardless of whether the expulsion hearing is conducted in a closed or public session, the governing board may meet in closed session for the purpose of deliberating and determining whether the pupil should be expelled.

"...

"(j) Whether an expulsion hearing is conducted by the governing board or before a hearing [*9] officer or administrative panel, final action to expel a pupil shall be taken only by the governing board in a public session. . . .

"(k) The governing board shall maintain a record of each expulsion, including the cause therefor. Records of expulsions shall be a nonprivileged, disclosable public record.

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

Thus an expulsion hearing must be conducted in closed session unless the pupil makes a written request that the hearing be conducted at a public meeting. The final action of the governing board to expel a pupil must be taken in public, and the minutes must include the reason for the expulsion. (See also §§ 35145-35146.) Section 48918 expressly answers the question whether the cause of a pupil's expulsion must be disclosed to the public. It must.

As for identifying the expelled pupil, we believe that the pupil's name is also subject to public disclosure under the terms

The Legislature has also declared that certain California statutes (§§ 49060–49079) are to be applied in a manner consistent with the provisions of the federal Family Education Rights and Privacy Act (20 U.S.C. § 1232g) "regarding parental access to, and the confidentiality of, pupil records in order to insure the continuance of federal education funds to public educational institutions within the state . . ." (§ 49060.) The federal law prohibits the release of any records relating to the discipline of students without the written consent of the parents; otherwise, "[n]o [federal] funds shall be made available" to the institution. (20 U.S.C. § 1232g(b)(1).) However, the federal law does not purport to preempt any state laws, and section 48918 is not one of the statutes identified by the Legislature as requiring interpretation consistent with the federal law.[3]

We conclude in answer to the second question that in taking final action to expel a pupil, the governing board must disclose the pupil's name and the cause for the expulsion. The minutes of the meeting must so reflect. In responding to requests from the public for the release of expulsion records, the school district is required to disclose the pupil's name and the cause for the expulsion.

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Opinion No. 96-906—April 24, 1997

Requested by: MEMBER OF THE CALIFORNIA SENATE

Opinion by: DANIEL E. LUNGREN, Attorney General
Anthony M. Summers, Deputy

THE HONORABLE DICK MONTEITH, MEMBER OF THE CALIFORNIA SENATE, has requested an opinion on the following questions:

1. Under what circumstances may a pupil be expelled from school for "possessing" a firearm?

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90 F.3d 367; *Coplin* v. *Conejo Valley Unified School Dist.* (C.D.Cal. 1995) 903 F.Supp. 1377). Whether a school district would be subject to liability for the failure to disclose the name is beyond the scope of this opinion. (See *Skinner* v. *Vacaville Unified School Dist.* (1995) 37 Cal.App.4th 31.)

[3] The Legislature has declared that the confidentiality terms of sections 49060–49079 are to control over any conflicting provisions contained in section 12400 and in Government Code sections 6250–6270. We cannot add section 48918 to this list specified in section 49060 in the guise of statutory interpretation. " '[C]ourts are no more at liberty to add provisions to what is therein declared in definite language than they are to disregard any of its express provisions.' " (*Wells Fargo Bank* v. *Superior Court* (1991) 53 Cal.3d 1082, 1097.) The Legislature thus knows how to resolve the conflict between section 48918 and sections 49060–49079 in favor of the latter statutory scheme if it chooses to do so. (See *Safer* v. *Superior Court* (1975) 15 Cal.3d 230, 236, 238; *Board of Trustees* v. *Judge* (1975) 50 Cal.App.3d 920, 927; see also *Wildlife Alive* v. *Chickering* (1976) 18 Cal.3d 190, 196; *DeWeese* v. *Unick* (1980) 102 Cal.App.3d 100, 106; *Rich* v. *State Board of Optometry* (1965) 235 Cal.App.2d 591, 60[illegible]

What circumstances constitute an abuse of discretion by a county board ucation in reversing the decision of a governing board of a school ct to expel a pupil?

May the governing board of a school district seek judicial review of ision of the county board of education reversing the district board's ion to expel a pupil?

## CONCLUSIONS

A pupil may be expelled from school for "possessing" a firearm if upil knowingly and voluntarily has direct control over the firearm. The exceptions are where the pupil has the permission of school officials ssess the firearm or where the possession is brief and solely for the ose of disposing of the firearm such as handing it to school officials.

A county board of education abuses its discretion in reversing the ion of a governing board of a school district to expel a pupil if it does omply with the statutory requirements applicable to such review.

The governing board of a school district may seek judicial review of ision of the county board of education reversing the district board's ion to expel a pupil.

## ANALYSIS

e Legislature has enacted a comprehensive statutory scheme (Ed. Code, 900–48926)[1] governing the suspension and expulsion of pupils from entary and secondary schools. "Suspension" is the "removal of a pupil ongoing instruction for adjustment purposes . . .." (§ 48925, sub. (d).) ulsion" is the "removal of a pupil from (1) the immediate supervision control, or (2) the general supervision, of school personnel . . .." 925, subd. (b).)

e three questions presented for resolution concern the expulsion of a for possessing a firearm on school property. What does "possession" , when does a county board of education abuse its discretion in ing a school board's decision to expel a pupil, and may the school seek judicial review of the county board's decision?

"Possession" of a Firearm

tion 48900 states in part:

"A pupil may not be suspended from school or recommended or expulsion unless the superintendent or the principal of the

[1] References hereafter to the Education Code are by section number only.





school in which the pupil is enrolled determines that the pupil has:

". . . . . .

"(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.

". . . . . .

"A pupil may not be suspended or expelled for any of the acts enumerated unless that act is related to school activity or school attendance occurring within a school under the jurisdiction of the superintendent or principal or occurring within any other school district.

". . . . . ."

Section 48915 provides in part:

". . . . . .

"(c) 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 a 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 first question concerns the meaning of the terms "possessed" and "possessing" in sections 48900 and 48915 as they related to the possession of a firearm.

In addressing this question, we rely on well established principles of statutory construction. We are to interpret statutes so as to effectuate the intent of the Legislature. (*Brown* v. *Kelly Broadcasting Co.* (1989) 48 Cal.3d

., 724.) "In doing so we turn first to the statutory language, since the rds the Legislature chose are the best indicators of its intent. [Citation.]" *reedom Newspapers, Inc.* v. *Orange County Employees Retirement stem* (1993) 6 Cal.4th 821, 826.) The words of a statute are to be given eir usual and ordinary meaning." (*DaFonte* v. *Up-Right, Inc.* (1992) 2 l.4th 593, 601.) "Statutes are to be given a reasonable and commonsense erpretation . . .." (*Dyna-Med, Inc.* v. *Fair Employment & Housing Com.* 987) 43 Cal.3d 1379, 1392.)

"Possession" in this context has been defined by the courts as the mediate control of an object; the thing possessed must be under the minion of the possessor. (*People* v. *Bigelow* (1951) 104 Cal.App.2d 380, 5.) Possession may be in the hand, clothes, purse, bag, or other container. *eople* v. *Sills* 156 Cal.App.2d 618, 622.) Having the object for even a nited time and purpose constitutes possession. (*People* v. *Neese* (1969) 2 Cal.App.3d 235, 245.) However, brief possession solely for the purpose disposing of the object is not unlawful, as in the case where a person moves illegal drugs from the pocket of an unconscious friend and mediately throws them away. (*People* v. *Mijares* (1971) 6 Cal.3d 415; e also *People* v. *Cole* (1988) 202 Cal.App.3d 1439.) We believe that disposing" of an object in this context includes transferring it to law forcement officers or other proper authorities.

Accordingly, if a pupil is handed a firearm by another pupil, brings it a restroom, and abandons it, such acts constitute a violation of section 8900 or 48915, unless the sole purpose of the brief possession is to dispose the firearm. If a pupil places a firearm in the backpack of another pupil, lls the other pupil of the firearm's location, and the other pupil returns ie firearm an hour later wrapped in a coat, both pupils have sufficient possession" to constitute a violation of section 48900 or 48915; no tention to dispose of the firearm could be asserted based upon such limited cts. It also constitutes a violation of either statute if the pupil accepts a rearm from another pupil, hides it under his coat for a short time, and ien returns the firearm. As long as the possession is knowing and voluntary id not for the purpose of disposing of the firearm, e.g., handing the firearm school officials, the pupil "possesses" the firearm regardless of the length time involved.

We conclude in answer to the first question that a pupil may be expelled om school for "possessing" a firearm if the pupil knowingly and voluntar- has direct control over the firearm. The only exceptions are where the pil has the permission of school officials to possess the firearm (§§ 48900,





48915) or where the possession is brief and solely for the purpose of disposing of the firearm such as handing it to school officials.

2. Abuse of Discretion

The second question presented concerns the circumstances under which a county board of education abuses its discretion in reversing the decision of a school board to expel a pupil. We conclude that the failure to comply with the governing statutory requirements would constitute an abuse of discretion.

Following expulsion by the governing board of a school district, an appeal to the county board of education is available to the pupil or the pupil's parent or guardian. (§ 48919.) The basis for the county board's decision is the record of the hearing before the district governing board. (§ 48921.) The scope of the county board's review is defined by section 48922:

> "(a) The review by the county board of education of the decision of the governing board shall be limited to the following questions:
>
> "(1) Whether the governing board acted without or in excess of its jurisdiction.
>
> "(2) Whether there was a fair hearing before the governing board.
>
> "(3) Whether there was a prejudicial abuse of discretion in the hearing.
>
> "(4) Whether there is 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.
>
> "(b) As used in this section, a proceeding without or in excess of jurisdiction includes, but is not limited to, a situation where an expulsion hearing is not commenced within the time periods prescribed by this article, a situation where an expulsion order is not based upon the acts enumerated in Section 48900, or a situation involving acts not related to school activity or attendance.
>
> "(c) For purposes of this section, an abuse of discretion is established in any of the following situations:
>
> "(1) If school officials have not met the procedural requirements of this article.

"(2) If the decision to expel a pupil is not supported by the findings prescribed by Section 48915.

"(3) If the findings are not supported by the evidence.

"A county board of education may not reverse the decision of a governing board to expel a pupil based upon a finding of an abuse of discretion unless the county board of education also determines that the abuse of discretion was prejudicial."

county board's decision is also circumscribed by the terms of section 123:

"The decision of the county board shall be limited as follows:

"(a) 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 do either of the following:

"(1) Remand the matter to the governing board for reconsideration and may in addition order the pupil reinstated pending such reconsideration.

"(2) Grant a hearing de novo upon reasonable notice thereof to the pupil and to the governing board. The hearing shall be conducted in conformance with the rules and regulations adopted by the county board under Section 48919.

"(b) In all other cases, the county board shall enter an order either affirming or reversing the decision of the governing board. In any case in which the county board enters a decision reversing the local board, the county board may direct the local board to expunge the record of the pupil and the records of the district of any references to the expulsion action and such expulsion shall be deemed not to have occurred."

ese statutes define the scope of the county board's discretion. If a county rd should act in a manner not authorized by the statutes, such failure uld constitute an abuse of discretion. (See Code Civ. Proc., § 1094.5, d. (b); *Laupheimer* v. *State of California* (1988) 200 Cal.App.3d 440, ; *City of Poway* v. *City of San Diego* (1984) 155 Cal.App.3d 1037, 1041 e question of abuse of discretion, which is established if the agency not proceeded as required by law . . ."].)

Accordingly, we conclude in answer to the second question that a county rd of education abuses its discretion in reversing the decision of a





governing board of a school district to expel a pupil if it does not comply with the statutory requirements applicable to such administrative review.

3. Judicial Review

The final question presented is whether the governing board of a school district may seek judicial review of the decision of a county board of education reversing the school board's decision to expel a pupil. We conclude that it may.

Section 48924 provides:

> "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. The pupil and the governing board shall be notified of the final order of the county board, in writing, either by personal service or by certified mail. The order shall become final when rendered."

Do the words "final" and "binding" contained in section 48924 preclude a school board from seeking judicial review of the county board's order?

In *Fremont Union High Sch. Dist.* v. *Santa Clara County Bd. of Education* (1991) 235 Cal.App.3d 1182, the governing board of a school district sought judicial review of the decision of a county board of education reversing the school board's decision to expel a pupil. It was unquestioned that the school board could seek judicial review, and indeed the trial court granted the board's petition for a writ of mandate ordering the county board to set aside its decision; on appeal, the judgment in favor of the school board was affirmed.

While there is no explicit statutory directive for judicial review of a county board's decision concerning expulsion, it is the general rule that the decisions of administrative bodies rendering quasi-judicial decisions are reviewable under the administrative mandate provisions of Code of Civil Procedure section 1094.5. (See *Temescal Water Co.* v. *Dept. of Public Works* (1955) 44 Cal.2d 90, 102.) The language of section 48923, that the decision of the county board is "final and binding upon the pupil and upon the governing board of the school district," in no way precludes either the school board or the pupil from seeking judicial review. Indeed, the statement that the decision is "final and binding" establishes one of the requirements for judicial review, since only final administrative decisions may be reviewed by a court. (See, e.g., *State of California* v. *Superior Court (Veta)* (1974) 12 Cal.3d 237, 245.)

APPENDIX - C12



We thus conclude in answer to the third question that the governing board of a school district may seek judicial review of a decision of the county board of education reversing the district board's decision to expel a pupil.

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Opinion No. 96-508—April 25, 1997

Requested by: DISTRICT ATTORNEY, SAN MATEO COUNTY

Opinion by: DANIEL E. LUNGREN, Attorney General
Clayton P. Roche, Deputy

THE HONORABLE JAMES P. FOX, DISTRICT ATTORNEY, SAN MATEO COUNTY, has requested an opinion on the following question:

May a person place a bet by telephone in California to a location where such bet would be legal?

CONCLUSION

A person may not place a bet by telephone in California to a location where such bet would be legal.

ANALYSIS

This request for our opinion involves a scheme described as "English Sports Betting." California residents are solicited to open a betting account with an organization based in Jamaica where betting is legal. Bets may be placed on all types of contests, such as horseracing, sports events, and election results, through use of an "800" telephone number.

We are asked whether using a telephone in California to place a bet with a bookmaker in another jurisdiction where gambling is legal would contravene state law.[1] We conclude that placing the bet by telephone in California would be illegal.

Lotteries and other forms of gambling are generally prohibited under the terms of Penal Code sections 319–337.9.[2] Relevant to the issue presented herein is section 337a, which provides:

[1] We were also asked whether betting through use of the internet would be illegal. Because this issue is pending in current litigation, we will refrain from responding to this inquiry. (See 66 Ops.Cal.Atty.Gen. Foreword (1983).)

[2] All references hereafter to the Penal Code are by section number only.

# Study Finds Racial Bias in Public Schools

By TAMAR LEWIN

Black students in public schools across the country are far more likely than whites to be suspended or expelled, and far less likely to be in gifted or advanced placement classes, according to a study of 12 large public school districts released yesterday by the Applied Research Center, a left-leaning nonprofit public policy group in Oakland, Calif.

The study, which comes at a time of heightened attention to racial differences in education, found inequalities in the district studied: Austin, Tex., Boston, Chicago, Denver, Durham, N.C., Los Angeles, Miami, Columbia, S.C., San Francisco, Missoula, Mont., and Providence, R.I.

"Parents often feel that these are individual issues," said Libero Della Piana, a senior researcher at the center and a co-author of the report, "that it's just their kid having a problem, that it's about this teacher or that administrator, but when you look at the data, you see it's a systemic issue along race lines."

In every district studied except Missoula, Mont., where the data were unavailable, black students were suspended or expelled at a higher rate than their white peers. In Los Angeles, for example, black students made up 14 percent of the student body, but 30 percent of those suspended or expelled. The study did not offer details about whether students at the same school received similar punishments for similar acts.

Last fall, the racial skew in expulsion rates became a national issue after six black students in Decatur, Ill., were expelled following a brawl in the bleachers at a high school football game, and the Rev. Jesse L. Jackson's Rainbow/Operation PUSH Coalition filed a civil-rights lawsuit. The case was dismissed and the expulsions upheld, but the testimony showed that blacks accounted for more than 80 percent of the district's expulsions over the last four years, even though they make up less than half of the student body.

That kind of racial skew is common in several aspects of education, the study found. In all nine districts that provided statistics on academic placement by race, the study found, white students were disproportionately represented in advanced placement and gifted programs, and minority students underrepresented.

In San Francisco, the study found that blacks and Latinos make up 42 percent of the student body, but only 14 percent of those in advanced placement and gifted programs. And in Durham, N.C., where blacks and Latinos make up 62 percent of the students, they represent only 27 percent of the students in academically advanced classes. While few of the districts studied had large Asian-American populations, the Asian-American students in most districts were overrepresented in advanced classes and underrepresented among those who were disciplined.

The study asserts that the disparities amount to "a deep pattern of institutional racism." But many education experts took issue with that conclusion. While the inequalities described in the study are distressing, they say, those differences, like the well-documented racial gap on test scores, do not necessarily add up to institutional racism.

"Unfortunately, we have a lot of history and evidence that schools tend to reproduce the economic and social disparities of the larger society," said Robert B. Schwartz, president of Achieve, a school reform group made up of governors and corporate executives. "We look to schooling to be this great equalizing engine, but history hasn't been terrific on that score. Can one deny that racism persists? Of course not. But I think it's more complicated than racism alone. Obviously, class plays into this, and other factors."

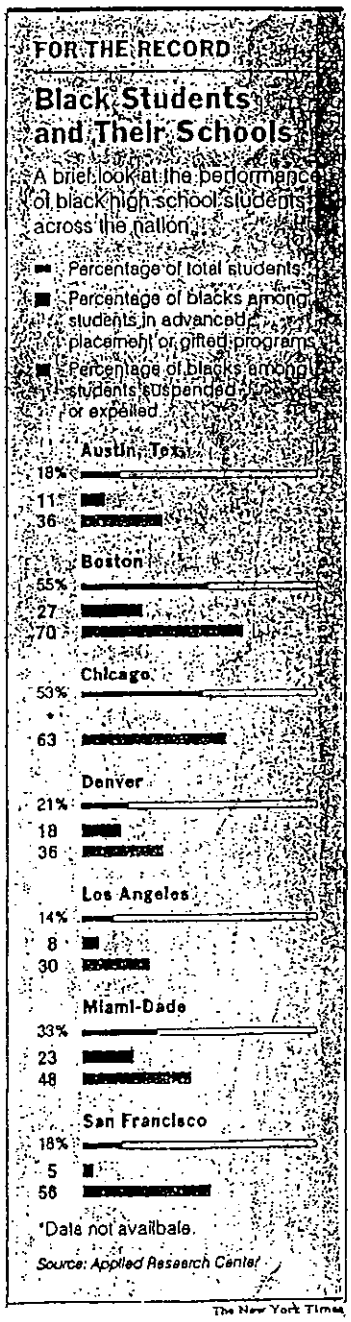
The study examined 10 indicators, including the dropout rate, graduation rate, suspensions and expulsion, advanced and gifted classes, college admissions and the racial demographics of the teachers compared with those of the students.

In all the districts, the percentage of white teachers was higher than the percentage of white students, often by a huge margin. In Denver, more than three-quarters of the teachers, but less than one-quarter of the students, were white. And in Los Angeles and Chicago, about half the teachers, but only about one in 10 students, were white.

While federal regulations require the reporting of some data, including the racial makeup of the student body, there is no nationwide mandate to keep other statistics, like expulsions and suspensions, or the number of students admitted to a college, by race. And of the 12 districts included in the study, 9 either did not keep, or would not disclose, all the data requested. For example, 3 of the 12 districts did not report data on the racial makeup of their advanced placement and gifted classes.

But more data by race may be forthcoming. Partly because of the experience in Texas, where school results have improved since achievement was tracked by race, many legislators, both Democrats and Republicans, are supporting efforts to tally education statistics by race.

"Texas has been an important model for this," said Gary Orfield, a professor of education at Harvard. "Requiring more data by race doesn't produce a solution, but it means the problems can't be covered up."



*Rescinded, Amended, and Re-Adopted by the*
*Board of Education at its Regular Meeting of June 22, 1999*

Subject: Resolution No. 92-23A6
COLLABORATING WITH THE COMMUNITY TO ENSURE SAFE SCHOOLS
- Commissioner Steve Phillips

WHEREAS: The San Francisco Unified School District wishes to continue its successful collaboration with law enforcement to ensure safety in our schools; and

WHEREAS: The SFUSD and the San Francisco Police Department work as a team to enhance the security and education of the SFUSD staff and its students;

WHEREAS: SFUSD wishes to maintain and strengthen the relationship of trust between schools and student's families.

WHEREAS: SFUSD recognizes the serious potential consequences for youth of juvenile court involvement and wishes to avoid unnecessary criminalization of our students.

WHEREAS: The San Francisco Police Department devotes more than 50 officers to school related issues, including School Resource Officers assigned to every middle school and twenty "29 cars", whose primary responsibility are to provide assistance to schools and to respond to juvenile-related activity in and around schools and in the community;

WHEREAS: SFUSD staff members and administrators work with School Resource Officers and 29 cars to provide a law enforcement presence on school campuses in order to reduce crime and foster positive interaction and improve communication between police officers, staff and students;

WHEREAS: SFUSD works with the SFPD to provide educational courses to its students in areas such as personal safety, vehicle safety, drug and alcohol education, truancy prevention, delinquency prevention, crime prevention, and gang-related issues;

WHEREAS: SFUSD and the SFPD wish to encourage, continue and improve upon the involvement of law enforcement in the education and safety of the students and staff; and

WHEREAS: SFUSD wishes to maintain District-wide consistency with regard to the procedure for requesting police response to an incident regarding the potentially criminal behavior of a student;

NOW THEREFORE BE IT RESOLVED:

A. Staff members and school site administrators shall only continue to request police assistance in the following situations:

1) When police involvement is necessary to protect the physical safety of students or staff;
2) When required by law (Please refer to the student handbook);
3) When appropriate to address criminal behavior of persons other than students.

Police involvement should not be requested in any situation that can be safely and appropriately handled by the school or District's internal disciplinary procedures.

B. Staff members and school site administrators should continue to encourage informal contact between police officers and students, including counseling and implementation of crime prevention programs, and other school related activities. With respect to disciplinary matters, no staff member or school site administrator should request that police officers perform functions normally within the purview of District employees. Specifically, no employee should use police officers to interview students or otherwise collect evidence for an expulsion hearing, unless the employee believes that such an investigation could pose a danger to themselves or others.

C. The District shall distribute a list of community resources that a teacher or school administrator may use to address problem behavior in students, such as gang prevention programs.

D. All school staff shall receive information regarding counseling services and receive training on how to assist students dealing with behavioral, personal, and educational issues. When a student has persistent behavioral problems, the school site and Youth Development and Coordinated Services Department shall continue to develop a plan for services for that student, which would include counseling services.

E. If a district employee believes that police assistance is required to address the behavior of a student, the following procedures shall apply:

1. If a student poses an immediate danger to the student or others, a staff member should, in an emergency or crisis situation that reasonably precludes prior notification of the school site administrator, call "911," a 29 car, or any other police officer. The staff member should notify the school site administrator as soon as possible after making a request for such emergency response.

2. If a student does not pose an immediate danger to the student or to others, a staff member should contact a school site administrator prior to requesting police response to an incident involving potentially criminal behavior by a student. That administrator shall determine whether the incident falls within the criteria described in Section A.

3. In situations where police are on campus for other reasons, such as teaching a class, the above procedure must still be followed in that the above criteria must still be met prior to involving police in a school discipline matter.

4. When either the staff member or the school site administrator requests that the police respond to an incident involving potentially criminal behavior by a student, the school site administrator must notify the School Operations Office regarding police response to incidents involving students as soon as possible, and prepare a written incident report to the School Operations Office on the same day. District staff shall monitor reports of calls to police. Disproportionate use of police intervention in inappropriate situations shall be cause for corrective action by the District.

5. Except in emergency situations, the school shall conduct its own investigation prior to making the decision to request police involvement, including interviewing the student and other witnesses, in order to determine whether police involvement is warranted under this resolution.

~~6. When Car 29 or other police officers come to schools for classroom activities, outreach efforts or other community partnership activities, e.g.: for non-enforcement and non-emergency functions, they shall not bring any firearms onto the campuses or facilities of the SFUSD.~~

*6. That the staff is requested to meet with the San Francisco Police Department to develop appropriate MOU's defining the Car 29 and all other school-police partnership programs by the start of the 1999-2000 school year. As part of these MOU's, the Board of Education requests the police to explore the possibility of not bearing arms when on campus for these non-enforcement roles.*

F. Except in situations where the student is a suspected victim of child abuse, the school must immediately call the student's parents. Efforts to contact parents must include calling all numbers listed on an emergency card, including work numbers, pager numbers, and any number supplied by the student. Parents must be given reasonable opportunity to come to the school and be present for any police interrogation. If a parent cannot be found, the school site should offer the student the option of having an adult, of his or her choice if available, from the school present during an interrogation.

G. The Pupil Personnel Department shall develop and provide an annual training to all administrators, deans, counselors, teachers, and other on-sight personnel. The training shall address the enforcement of the procedures set forth in this resolution, the rights of minors with regard to the police, and the potential consequences for youth of police and/or juvenile court involvement.

H. The Board shall appoint a committee of parents, students, school staff, police and community members to review summaries of incident reports submitted to Operations, redacted copies of records from CARC, and input from parents, students and community and make a report to the Board in the Spring of 2000. The District shall make a report of police involvement, broken down by type of offense, available to this committee on a quarterly basis.



*New Language in Bold and Italics - 6/22/99*
~~Old Language Stricken Out~~

APPENDIX - F1

# Oakland Unified School District
## Student Services
## Pupil Disciplinary Hearing Panel

## PDHP SCRIPT

Introduction:

1. This hearing is being taped. In the matter of [state full name of pupil (s)] this hearing will come to order. The time is _____. The date is _____. The place is the Oakland Unified School District, Student Services, and we are holding this hearing in _____.

2. My name is _____, and I will be chairing this hearing panel. Will the other members of the PANEL please state their name for the record.

2 (a). [ If present ] Will the TRANSLATOR please identify ...self for the record and state position held.

3. Will the SCHOOL REPRESENTATIVE please identify ...self for the record and state position held.

4. STUDENT: Young man / lady, will you please state your first name, last name; Birthdate; address; zip code; telephone number?
What grade are you in? What school do you attend?

5. PARENT / GUARDIAN: Will (student's name) parents or guardians please identify themselves for the record and state relationship to _____.
Did you receive your notice about the hearing?
Do you have any questions about the notice?

*( REPEAT IDENTIFYING INFORMATION FOR EACH PUPIL / PARENT )*

6. If a pupil or parent is not present at the time the hearing is convened, state either of the following statements if true:

a. Let the record indicate that although properly noticed (student's full name and / or parent's / guardian's full name) are not present and the panel has not received a prior written request for continuance, the hearing will proceed as scheduled.

b. Let the record indicate that the Panel received two days prior to this hearing a written request for continuance from (name of pupil and / or parent / guardian) and a request for a continuance was granted to (new date and time).

7. If pupil has a REPRESENTATIVE / COUNSEL or if PANEL'S ADVISOR is present, have each identify ... self and state position.

8. If a pupil, parent or representative arrives late, identify each for record as above, noting the time of arrival and proceed with hearing from point at which you are.

*** [ If NON-WITNESS RELATIVES OR FAMILY FRIENDS are present ] they should be identified for the record and an affirmative response from pupil's parent or guardian that permission is granted for their presence should be elicited. [ Otherwise, such persons must be excluded because the hearing is closed (unless a parent / guardian has requested a hearing opened to the public; in case of a multi-pupil hearing, all parents / guardians would have to agree to an open hearing) and part of the pupil's school record which may be disclosed except with parent consent or under judicial order. ]

Statement of Purpose and Authority of Panel:

9. This Panel has been established by the Board of Education for the purpose of determining whether or not a student is guilty or not guilty of offenses for which expulsion has been recommended. The decision as to _____ guilt or innocence will be based solely on the properly admitted evidence presented at this hearing.

If the Panel finds that (s)he / they are guilty, (s)he / they may be recommended for expulsion or an alternative placement could be recommended such as placement at another comprehensive school or an opportunity/continuation program. [ If in Special Education, the pupil could be referred to Special Education for appropriate placement. ]

Expulsion means not being allowed to attend any school within the Oakland Unified School District until further permitted by the Board of Education.

Procedure of Hearing:

The way we proceed in this hearing is as noticed: The Panel will permit either side – the school and the parent – to make an opening statement. An opening statement is a brief statement which states what you hope to prove by being here. [ Panel should insure that the statement is limited to what each hopes to prove. ]

Afterwards, the school will be allowed to present its case, including witnesses, and evidence to prove the charges. Each of you will be given the opportunity to question any and all witnesses and examine any and all evidence presented by the school.

After the school presents its side of the story, if the pupil(s) would like to give her (his) / their side of the story to disprove or otherwise respond to the charges(s), with his (her) / their parent's permission, (s)he / they may do so. Also if the pupil has any witnesses, the witness will be allowed to testify before _____ testifies and the school representative will be given an opportunity to question any witnesses and examine any evidence presented by the pupil.

After the Panel has heard all witnesses and received all evidence, the school representative and the parent will be given an opportunity to make a closing statement. A closing statement is an opinion, by the respective side, and based on the witnesses and evidence presented, as to whether or not the case has been proven or not proven against the pupil, and what disposition (or outcome) the Panel should make.

The law gives the Panel up to three school days to make a decision on the charges. We may take three school days, or we may take a short recess to make our determination immediately. We will let you know towards the end of the hearing, today, which choice we will take, before we do so.

Are there any questions as to how the hearing is going to proceed? [ Panel may respond to questions on procedure. ]

Opening Statements:

10. Is there an opening statement on behalf of the school?
Does the parent / guardian have an opening statement on behalf of the pupil?
[ What do you hope or intend to prove by being here today? ]

Oath:

11. (Administrator), Please raise your right hand. Do you affirm that the testimony that you are about to give this Panel is the truth and is given under penalty of perjury?

12. Will you please state the Education Code violation(s) that _____ school has filed against (pupil's name). If (b), (c), (d) charge, request a thorough description of the object. [ Request should be repeated for each pupil. ]

(Administrator), Please describe the incident that led you to file these charges.

Questions:

13. (Individually ask each parent / guardian or representative by name) if (s)he has any questions for (state name of administrator).

[ Reminder: This is the opportunity to ask questions about the administrator's testimony (factual and sequential information); remarks and statements are allowed only during the closing statement. ]

Ask each Panel member if (s)he has any questions for (state name of administrator).

14. (Administrator), Do you have any witnesses on behalf of (name of school)?

[ Recess until witness is seated. ]

Witness Oath and Explanation:

15. My name is _____, and I am chairing this hearing Panel. Introduce other Panel members, school representative, parents, and other representatives.

OATH: Please raise your right hand. Do you affirm that the testimony that you are about to give this Panel is the truth and is given under penalty of perjury?

Please state your first and last name (and spell them). Please tell us your place of employment and position held.

(Administrator), Please direct you witness.

Questions:

[ Repeat procedure for # 13 for questions of witness. ]

[ Procedure is repeated for each defendant pupil and any witness he or she calls on behalf of.... ]

Student Witness Oath and Explanation:

16. If present, ask parent / guardian if (s)he gives permission for their son / daughter to give his / her side of the story. Yes / No.

Oath: Do you affirm that the testimony that you are about to give the Panel is the truth and is given under penalty of perjury? Do you know perjury means? Perjury means to lie under oath. If you go to court and affirm / swear to tell the truth, and the judge later finds out that you did not tell the truth, the judge could send you to juvenile hall for not telling the truth. We cannot do that, but we expect you and we want you to tell us the truth. So will you tell us the truth? Yes / No. Please state your first and last name and spell them; grade; school.

Questions for Student Witnesses:

[ Repeat procedure for # 13 for questions of witness. ]

Oath for Pupil(s):

17. Ask parent / guardian if (s)he gives permission for their son / daughter to give his / her side of the story. Yes / No.

Ask pupil is (s)he has any witness(es) to present on his / her side of the story. (If pupil is going to testify for .... self, (s)he should be allowed to do so after presenting his or her witness(es). ( Calling on the pupil after his or her witness(es) allows an opportunity for pupil to be asked about anything that t may have been stated by the witness. )

Oath: Do you affirm that the testimony that you are about to give the Panel is the truth and is given under penalty of perjury? Do you know perjury means? Perjury means to lie under oath. If you go to court and affirm / swear to tell the truth, and the judge later finds out that you did not tell the truth, the judge could send you to juvenile hall for not telling the truth. We cannot do that, but we expect you and we want you to tell us the truth. So will you tell us the truth? Yes / No. Please state your first and last name and spell them; grade; school.

Questions for Pupil(s):

[ Repeat procedure for # 13 for questions of witness.

Individually ask parent / guardian, representative by name if (s)he would like to ask any questions.
Ask Panel members if they have any questions.
Give school administrator same opportunity to question witness(es) and pupil(s). ]

Closing Statement:

18. After all witnesses have testified for each side,

Ask Administrator if (s)he has a closing statement on behalf of (name of school).

Each parent / guardian, representative is asked by name: Do you have a closing statement as to what should be the outcome of this hearing?

Options:

19 (a). If the Panel will decide the case today, state:
The hearing is now recessed for purposes of deliberation.

19 (b). If the Panel will take three school days, state:
The Panel has decided to take up to the three school days for purpose of deliberation. Pupil and parent will be notified by mail of our decision. The Panel will now take a recess with the hearing record remaining open for the purpose of our findings and recommendations, if any.

[ When a decision is reached, the Panel should go back on record, noting the date, time, and which Panel members are present, and enter its findings, e.g. ]

Decision:

20. The Panel finds that (name of pupil) is:

a) not guilty of violating Education Code Section(s): _____
b) guilty of violating Education Code Section(s): _____

If found guilty, state:

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

or

- that due to the nature of the violation(s), the presence of the pupil causes a continuing danger to the physical safety of others.

21. The Panel orders:

- that (pupil's full name) is referred to the Placement Officer for placement for
  - Another Comprehensive Placement
  - Opportunity Program
  - Continuation Program

- that (pupil's full name) is:
  - placed on Suspended Placement for another comprehensive school. If probation is violated, order for change in placement will be enforced.
  - referred to the Special Education Department for appropriate placement
  - returned to the Referred Site

- placed on probation with contracts for behavior

[ State time period (i.e. Fall and Spring of ...:) ]

- due to the seriousness of the violation that this matter be forwarded to the Board of Education with findings of fact and the recommendation that the pupil be expelled.

This hearing is now adjourned. The time is _____ .