

# Governing Board Student Discipline Workshop



**Milpitas Unified School District**  
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**Presented by:**  
Peter E. Denno, Senior Counsel

**aa/r**  
Atkinson, Andelson  
Loya, Ruud & Romo  
A Professional Law Corporation

# Outline

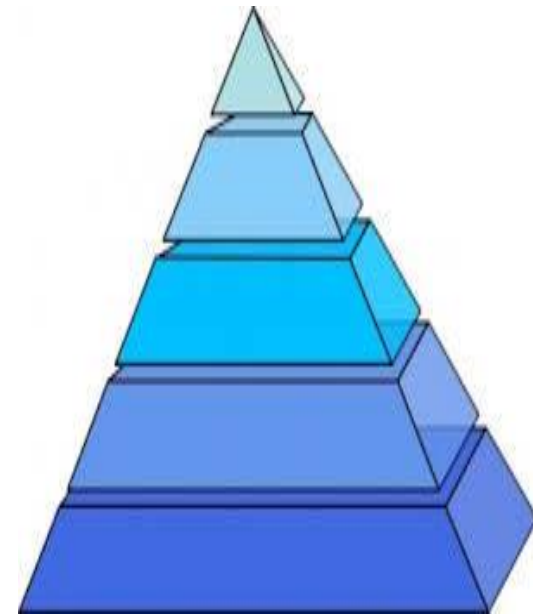
1. Expulsion Procedures & Due Process
2. Board Decision: Roles of Board and Administration
3. Stipulated Expulsion Agreements

# Expulsion Procedures & Due Process

# Discipline

## *Levels of District Discretion*

- I. Mandatory Suspension, Recommendation for Expulsion and Expulsion – “Big Five Bad Acts” – Ed. Code § 48915(c). \*\* **NO DISCRETION**
- II. Mandatory Recommendation for Expulsion unless special circumstances apply or alternate means of correction are feasible; Permissive Expulsion - Ed. Code § 48915(a).
- III. Permissive Recommendation for Expulsion and Permissive Expulsion – Ed. Code § 48900. \*\* **LOTS OF DISCRETION**



# Disciplinary Discretion

## *(I.) Mandatory Suspension, Recommendation for Expulsion and Expulsion*

- Ed. Code § 48915(c) requires a principal or superintendent to immediately suspend and recommend expulsion of a pupil that he/she determines committed any of the following five acts at school or a school activity off school grounds:

# Disciplinary Discretion

## *(I.) Mandatory Suspension, Recommendation for Expulsion and Expulsion*

- Big Five Bad Acts:

1. Possessing, selling, or otherwise furnishing a firearm, verified by employee.
2. Brandishing a knife at another person.
3. Unlawfully selling a controlled substance listed in Health and Safety Code §11053, *et seq.*  
(Note: Alcohol is NOT a controlled substance under Health and Safety Code §11053, *et seq.*)

# Disciplinary Discretion

## *(I.) Mandatory Suspension, Recommendation for Expulsion and Expulsion*

- Big Five Bad Acts (continued):
  4. Committing or attempting to commit a sexual assault or committing a sexual battery, as defined in Ed. Code § 48900(n).
  5. Possession of an **explosive**. Ed. Code § 48915(h) defines “explosive” for this section to mean a **destructive device** as defined by federal law (18 U.S.C. § 921).

# Disciplinary Discretion

## *(I.) Mandatory Suspension, Recommendation for Expulsion and Expulsion*

- Big Five Bad Acts (continued):
  - Under Ed. Code §48915(d), if the Governing Board or Hearing Panel finds that the student did in fact commit one of the “Big Five” bad acts, the Governing Board shall order a pupil expelled.
  - **NO EXCEPTIONS!**

# Disciplinary Discretion

## *(II.) Mandatory Recommendation for Expulsion; Permissive Expulsion*

- Recommendation for expulsion must be made unless the expulsion is not appropriate because of particular described circumstances, or that **alternative means of correction would address the conduct**. Ed. Code § 48915(a)(1):
  - A. Causing serious physical injury to another person, except in self-defense;
  - B. Possessing any **knife** or other dangerous object of no reasonable use to the pupil;
    - NOTE: “knife” specifically defined for this section under subdivision (g)

# Disciplinary Discretion

## *(II.) Mandatory Recommendation for Expulsion; Permissive Expulsion*

- C. Unlawful possession of any controlled substance listed in Health and Safety Code § 11053, except for:
- The first offense for the possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis, or
  - **The possession of OTC medication for use by the pupil for medical purposes or medication prescribed by a physician;**
- D. Robbery or extortion; or
- E. Assault or battery **upon a school employee**, as defined in Penal Code §§ 240 and 242.

# Disciplinary Discretion

## *(III.) Permissive Recommendation for Expulsion and Permissive Expulsions*

- A principal or superintendent **may** recommend expulsion and a Governing Board may order a pupil expelled upon a finding that the pupil violated Ed. Code §§ 48900(a)-(r), 48900.2, 48900.3, 48900.4, or 48900.7
- Check for overlap with Ed. Code § 48915(a) and (c), which require recommendations

# Additional Findings Requirement

- **Expulsion for any offense other than a 48915(c) “Big Five” offense requires one or both of these *additional findings* (and evidence to support it!):**
  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 student causes a continuing danger to the physical safety of the student or others.

Education Code §48915(b) and (e)

# Disciplinary Jurisdiction

- The Board has jurisdiction to expel for:
  1. An act **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.

# Disciplinary Jurisdiction

2. An act enumerated in Education Code section 48900, related to school activity or attendance that occurs at any time, including, but not limited to:
  - a) While on school grounds;
  - b) While going to or coming from school;
  - c) During the lunch period whether on or off the campus;
  - d) During or while going to or coming from a school sponsored activity.

# Governing Board Expulsion Procedures

## *Timing of Expulsion Hearing*

- Expulsion Hearing must be held **within 30 school days** of school's determination that student violated Education Code.
- Student or parent/guardian may request a postponement in writing
- At least one postponement may be granted – no more than **30 calendar days**.
- If good cause, then superintendent (or designee) may postpone for additional **5 school days**.
- Written notice of hearing must be given **at least 10 calendar days prior** to the date of the hearing, unless parent waives this right in writing.

# Governing Board Expulsion Procedures

## *Expulsion Hearing*

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- Student Representative:
  - Parent, legal counsel or a non-attorney advisor.
- School Representative:
  - Usually Vice-Principal or Principal.
  - If student uses attorney, school usually does as well.

# Governing Board Expulsion Procedures

## *Rules of Evidence at Expulsion Hearing*

- The technical rules of the Evidence Code **shall not apply** to an expulsion hearing
- **Relevant evidence** may be admitted and given probative effect if it is “the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs”

Education Code §48918(h)(1)

# Governing Board Expulsion Procedures

## *Rules of Evidence at Expulsion Hearing*

- Decision to Expel shall be based on “**substantial evidence**” relevant to the charges and received during the hearing.
  - “Substantial evidence” is a lower standard of proof than “preponderance of the evidence.” Courts have defined “substantial evidence” as “**relevant evidence that a reasonable mind might accept as adequate to support a conclusion.**” (*Hosford v. California State Personnel Board* (1977) 74 Cal.App.3d 302, 307-308.) Thus, the evidence in the record does not need to support a finding that it is more likely than not that a student committed the act(s) as charged (preponderance of the evidence standard), rather, the evidence in the record simply needs to be able to support a *reasonable conclusion* that a student committed the act(s) as charged.

# Governing Board Expulsion Procedures

## *Who Conducts the Hearing?*

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- The Board itself may conduct the expulsion hearing, or it may contract with a hearing officer or appoint an impartial Administrative Panel of three or more certificated persons, none of whom is a member of the Board or employed at the student's school site. *Education Code § 48918(d)*
- The procedural rules are the same, regardless of which body conducts the hearing. *Education Code § 48918(d)*

# Governing Board Expulsion Procedures

## *Who Decides Whether to Expel the Student?*

- The Board decides whether to expel the student.

*Education Code § 48918(j)*

- The Panel makes a recommendation to the Board, based on its findings of fact from the hearing.

*Education Code § 48918(e) and (f)*

# Governing Board Expulsion Procedures

## *What are the Administrative Panel's Responsibilities?*

- The Admin. Panel must conduct the hearing within 30 school days after the date the principal determines the student committed the offense, unless the student requests an extension.

Education Code § 48918(a)

- Under certain circumstances, the District may initiate extension of the time period for holding the hearing.

Education Code § 48918(a)

# Governing Board Expulsion Procedures

## *What are the Administrative Panel's Responsibilities?*

- Within three (3) school days after the hearing, the Admin. Panel must determine whether to recommend expulsion.

Education Code § 48918(e)

- If the Admin. Panel recommends expulsion, it must prepare findings of fact to support its recommendation and submit those findings to the Board.

Education Code § 48918(e)

- Recommendation of Expulsion to the Governing Board must be supported by **written Findings of Fact**.
  - Findings of Fact shall be **based solely on the evidence presented** during the expulsion hearing.
  - General Standard: Include information on what took place and why expulsion is recommended.

# **Board Decision: Roles of Board and Administration**

# Board Decision

## *What are the Board's Responsibilities?*

- **Within 40 school days** after the student is removed from school (suspended), the Board must decide whether to expel the student.
  - If the Board conducts the hearing, must decide **within 10 schooldays** after the hearing

Education Code § 48918(a)

# Board Decision

## *What are the Board's Responsibilities?*

- The Board's decision to expel must be based on substantial evidence, either contained in the Panel's findings **or provided at a Board ordered supplementary hearing**.

Education Code § 48918(f)

- The Board must inform the student/parent of their opportunity to speak to the Board in closed Session to **present information** which may affect the Board's consideration of the Admin. Panel's recommendations.
- **No new evidence** outside of the Admin. Panel record is heard.

# Board Decision

## *What are the Board's Responsibilities?*

- The Board may consider the recommendation in closed session but **must take action in open session.**

Education Code § 48918(j)

- The Board ultimately must decide **whether to accept the Administrative Panel's recommendation** to expel the pupil
  - If Board accepts expulsion recommendation, must also decide whether to accept Admin. Panel's recommended rehabilitation plan, or to modify it within the parameters of the law

# Board Decision

## *What are the Board's Responsibilities?*

- Written notice of the Board's decision must be provided to the parent and must include notice of:
  1. The **right to appeal** to the COE;
  2. The student's **placement** during the expulsion period;
  3. The parent's **obligation to inform a new school district** of the student's expulsion.

*Education Code § 48918(j)*

# Board Decision

## *Rehabilitation Plan*

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- The Governing Board **SHALL** recommend a plan of rehabilitation for the pupil at the time of the expulsion order which may include, but is not limited to, periodic review and assessment at the time of review for readmission.  
(Ed. Code § 48916 (b))

# Board Decision

## *Rehabilitation Plan*

- Other items that may be **recommended** in plan:
  - Improved academic performance
  - Tutoring
  - Special education assessment
  - Job training
  - Counseling
  - Employment
  - Community service, or
  - Other rehabilitative programs.

# Board Decision

## *Rehabilitation Plan*

- For controlled substance or alcohol expulsions, the Governing Board may require a pupil to enroll in a county-supported drug rehabilitation program before returning to school. No pupil shall be required to enroll without the consent of the parent/guardian. (Ed. Code § 48916.5.)

# Board Decision

## *Suspension of the Enforcement of Expulsion Order*

- Governing Board may **suspend the enforcement** of an expulsion order for not more than one (1) calendar year and assign the student to an **alternative placement**.
- The student is on **probationary status** during the suspended expulsion. (Ed. Code § 48917.)

# Governing Board Expulsion Procedures

## *Suspension of the Enforcement of Expulsion Order*

- A suspension of the enforcement of an expulsion order **is still an expulsion**.
- Not an appropriate option if there is not enough evidence to order an enforced expulsion.
- Attorney General opinion allows for section 48915(c) offenses to be suspended expulsions.
  - Consider legal risks of suspending enforcement for possession of a weapon.
  - Consider practical risks as well.
  - Must apply suspension of expulsion order criteria **equally** to all students.

# Governing Board Expulsion Procedures

## *Revocation of Suspended Expulsion Order*

- The Board **may revoke the suspension** and expel the student under the terms of the expulsion order if the student commits any further violations of the Education Code or the District's student discipline rules.

Education Code § 48917(d)

# Board Decision

## *Duration of Expulsion Order*

- **Ed. Code § 48916.**
  - 48915(c) “**Big Five**” **offenses**: one calendar year from the date of the expulsion
  - **All other offenses**: semester in which expulsion occurs plus one more semester

# Board Decision

## *Role of Administration*

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- The District's **administration**:
  - presents the Admin. Panel's findings of fact and recommendations to the Board for review
  - Ensures that the pupil and parents/guardians receive notice of their opportunity to address the Board during its closed session deliberation (but **not** to provide new evidence)
  - Provides clarification to the Board as needed regarding the hearing process and/or the hearing record

# Board Decision

## *Role of Administration*

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- The District's **administration**:
  - Provides the Board with information regarding the availability and/or feasibility of:
    - Alternative placement options
    - Programs and services for rehabilitation plan
      - Facilitates the Board's access to legal counsel as needed

# Stipulated Expulsion Agreements

# Stipulated Expulsion Agreements

- Parents may legally waive their student's due process right to an expulsion hearing (*Coplin v. Conejo Valley USD*, 903 F.Supp.1377 (C.D.Cal. 1995))
  - Administration prepares written agreement (typically with assistance of legal counsel) containing:
    - Stipulation to facts contained in the charges against the pupil
    - Stipulation that charges warrant expulsion
    - Stipulation to an expulsion order
    - Due Process waivers
    - Agreement to plan for rehabilitation, including alternative placement

# Stipulated Expulsion Agreements

- **Benefits** of stipulated expulsion:
  - District and parents/pupil avoid the hearing process
  - District secures waivers of due process rights (including the right to appeal to the County Board of Education) and thus a certain outcome
  - Pupil may obtain favorable terms of rehabilitation in exchange for agreeing to waive due process rights and not contest the expulsion
    - Suspension of enforcement with preferred alternative placement
    - Preferred terms of rehabilitation

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# Thank You

For questions or comments, please contact:

{ Peter E. Denno }  
(559) 225-6700  
pdenno@aalrr.com

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Atkinson, Andelson  
Loya, Ruud & Romo  
A Professional Law Corporation

# Question & Answer Session