

# **PIEDMONT UNIFIED SCHOOL DISTRICT**

## **Board Policy**

**Students**

**BP 5144.1**

### **SUSPENSION AND EXPULSION - DUE PROCESS**

The Board of Education has established policies and standards of behavior in order to promote learning and protect the safety and well-being of all students. When these policies and standards are violated, it may be necessary to suspend or expel a student from regular classroom instruction.

Suspended or expelled students shall be excluded from all school-related extracurricular activities during the period of suspension or expulsion.

Except where suspension for a first offense is warranted in accordance with law, suspension shall be imposed only when other means of correction fail to bring about proper conduct, or when the student's presence causes a danger to persons or property or threatens to disrupt the instructional process (Education Code 48900.5).

Expulsion is an action taken by the Board for severe or prolonged breaches of discipline by a student. Except for single acts of a grave nature, expulsion is used only when there is a history of misconduct, when other forms of discipline, including suspension, are not feasible or have failed to bring about proper conduct, or when the student's presence causes a continuing danger to him/herself or others. (Education Code 48915)

The grounds for suspension and expulsion and the procedures for considering, recommending and/or implementing suspension and expulsion shall be specified in administrative regulation.

### **Student Due Process**

The Board shall provide for the fair and equitable treatment of students facing suspension and expulsion by affording them their due process rights under the law. The Superintendent or designee shall comply with procedures for notices and appeals as specified in administrative regulation and law (Education Code 48911, 48915, 48915.5)

### **Required Parental Attendance**

The Board believes that parental involvement plays an important role in the resolution of classroom behavior problems. The Board expects that teachers will communicate with parents/guardians when behavior problems arise.

Whenever a student is removed from a class because he/she committed an obscene act, engaged in habitual profanity or vulgarity, disrupted school activities or otherwise willfully defied valid staff authority, the teacher of the class from which the student was removed may provide that the student's parent/guardian attend a portion of a school day in that class. After completing the classroom visit and before leaving school premises, the parent/guardian also shall meet with the principal or designee (Education Code 48900.1).

The Board encourages teachers, before requiring parental attendance, to make reasonable efforts to have the parent/guardian visit the class voluntarily. The teacher also may inform the parent/guardian about available resources and parent education opportunities. Teachers should reserve the option of required parental attendance for cases in which they

have determined that it is the best strategy to promote positive interaction between the student and the parent/guardian and to improve classroom behavior.

The teacher shall apply this policy uniformly to all students within the classroom. This policy shall apply only to a parent/guardian who lives with the student. (Education Code 48900.1)

Parental attendance may be requested on the day the student returns to class or within one week thereafter. The principal or designee shall contact any parents/guardians who do not respond to the request to attend school. The Board recognizes that parental compliance with this policy may be delayed, modified or prevented for reasons such as serious illness / injury / disability, absence from town, or inability to get release time from work.

### **Decision not to Enforce Expulsion Order**

In cases where expulsion is mandatory pursuant to Education Code 48915(c), the enforcement of an expulsion order typically shall not be suspended by the Board, although the Board has the authority to do so. In all other cases of expulsion, the order for expulsion may be suspended by the Board, on a case-by-case basis, pursuant to the requirements of law.

Legal Reference:

EDUCATION CODE

212.5 Sexual harassment

233 Hate violence reduction

1981 Enrollment of students

17292.5 Program for expelled students

32050 Hazing

35146 Closed sessions (re suspensions)

35291 Rules (for government and discipline of schools)

35291.5 Rules and procedures on school discipline

48660-48666 Community day schools

48900-48926 Suspension and expulsion

48950 Speech and other communication

49073-49079 Privacy of student records

CIVIL CODE

47 Privileged communication

CODE OF CIVIL PROCEDURE

1985-1997 Subpoenas; means of production

GOVERNMENT CODE

11525 Contempt

54950-54963 Ralph M. Brown Act (re closed sessions)

HEALTH AND SAFETY CODE

11014.5 Drug paraphernalia

11053-11058 Standards and schedules

## LABOR CODE

230.7 Discharge or discrimination against employee for taking time off to appear in school on behalf of a child

## PENAL CODE

240 Assault defined

242 Battery defined

243.4 Sexual battery

245 Assault with deadly weapon

261 Rape defined

266c Unlawful sexual intercourse

286 Sodomy defined

288 Lewd or lascivious acts with child under age 14 288a Oral copulation

289 Penetration of genital or anal openings

417.25 Laser scope

422.6 Interference with civil rights; damaging property

422.7 Aggravating factors for punishment

422.75 Protected classes

626.2 Entry upon campus after written notice of suspension or dismissal without permission

626.9 Gun-Free School Zone Act of 1995

626.10 Dirks, daggers, knives, razors or stun guns

868.5 Supporting person; attendance during testimony of witness

## UNITED STATES CODE, TITLE 20

7151 Gun free schools

## COURT DECISIONS

Woodbury v. Dempsey (2003) 108 Cal. App. 4th 421

Management Resources:

CDE PROGRAM ADVISORIES

0306.96 Expulsion Policies and Educational Placements, SPB 95/96-04

Adopted: July 5, 2000

Revised: August 22, 2007

# PIEDMONT UNIFIED SCHOOL DISTRICT

## Administrative Regulation

**Students**

**AR 5144.1**

### SUSPENSION AND EXPULSION DUE PROCESS

#### Definitions

*Suspension* from school means removal of a student from ongoing instruction for adjustment purposes. However, suspension does not mean any of the following: (Education Code 48925)

1. Reassignment to another education program or class at the same school where the student will receive continuing instruction for the length of day prescribed by the Governing Board for students of the same grade level.
2. Referral to a certificated employee designated by the principal to advise students.
3. Removal from the class, but without reassignment to another class or program, for the remainder of the class period without sending the student to the principal or designee as provided in Education Code 48910. Removal from a particular class shall not occur more than once every five school days.

*Expulsion* means removal of a student from the immediate supervision and control, or the general supervision, of school personnel. (Education Code 48925)

*School property*, for the purposes described in Education Code 48900, includes, but is not limited to, electronic files and databases. (Education Code 48900(s))

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

*School day* means a day upon which the schools of the District are in. (Education Code 48925)

*Student* includes a student's parent/guardian or legal counsel. (Education Code 48925)

*Principal's designee* means one or more administrators or, if there is not a second administrator at one school site, a certificated person specifically designated by the principal, in writing, to assist with disciplinary procedures. Only one such person may be designated at any time as the principal's primary designee and only one such person may be designated as secondary designee for the school year. The names of such persons shall be on file in the principal's office. (Education Code 48911)



### Notice of Regulations

At the beginning of each school year, the principal of each school shall ensure that all students and parents/guardians are notified in writing of all school rules related to discipline, suspension and expulsion. Transfer students and their parents/guardians shall be notified at the time of enrollment.

Notification shall include information about the availability of individual school rules and all District policies and regulations pertaining to student discipline.

### **Grounds for Suspension and Expulsion**

A student may be subject to suspension or expulsion when it is determined that he/she:

- a. Caused, attempted to cause, or threatened to cause physical injury to another person or willfully used force or violence upon the person of another, except in self-defense (Education Code 48900(a))
- 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 student had obtained written permission to possess the item from a certificated school employee, with the principal or designee's concurrence (Education Code 48900(b))

An explosive means destructive device and includes, but is not limited to, any explosive, incendiary, or poison gas bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter ounce, mine or similar device. A destructive device also includes any other type of weapon (except a shotgun or shotgun shell recognized by the United States

Secretary of the Army as suitable for sporting purposes) which might be converted to project an explosive

- c. Unlawfully possessed, used, sold, or otherwise furnished, or was under the influence of, any controlled substance as defined in Health and Safety Code 11053-11058, alcoholic beverage, or intoxicant of any kind (Education Code 48900(c))
- d. Unlawfully offered, arranged, or negotiated to sell any controlled substance as defined in Health and Safety Code 11053-11058, alcoholic beverage or intoxicant of any kind, and then sold, delivered or otherwise furnished to any person another liquid, substance or material and represented same as controlled substance, alcohol beverage or intoxicant (Education Code 48900(d))
- e. Committed or attempted to commit robbery or extortion (Education Code 48900(e))
- f. Caused or attempted to cause damage to school property or private property (Education Code 48900(f))
- g. Stole or attempted to steal school property or private property (Education Code 48900(g))
- h. Possessed or used tobacco or any products containing tobacco or nicotine products, including but not limited to cigars, cigarettes, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets and betel. This restriction shall not prohibit a student from using or possessing his/her own prescription products. (Education Code 48900(h))
- i. Committed an obscene act or engaged in habitual profanity or vulgarity (Education Code 48900(i))

- j. Unlawfully possessed or unlawfully offered, arranged, or negotiated to sell any drug paraphernalia, as defined in Health and Safety Code 11014.5 (Education Code 48900(j))
- k. Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, other school officials, or other school personnel engaged in the performance of their duties (Education Code 48900(k)) However, a K-3 student may not be suspended, and no student may be expelled, under this subdivision.
- l. Knowingly received stolen school property or private property (Education Code 48900(l))
- m. Possessed an imitation firearm, i.e., a replica of a firearm that is so substantially similar in physical properties to an existing firearm as to lead a reasonable person to conclude that the replica is a firearm (Education Code 48900(m))
- n. Committed or attempted to commit a sexual assault as defined in Penal Code 261, 266c, 286, 288, 288a or 289, or committed a sexual battery as defined in Penal Code 243.4 (Education Code 48900(n))
- o. Harassed, threatened, or intimidated a student who is a complaining witness or witness in a school disciplinary proceeding for the purpose of preventing that student from being a witness and/or retaliating against that student for being a witness (Education Code 48900(o))
- p. Unlawfully offered, arranged to sell, negotiated to sell, or sold the prescription drug Soma. (Education Code 48900(p))

q. Engaged in, or attempted to engage in, hazing.

r. Bullying, including cyberbullying pursuant to Education Code section 48900(r).

s. Made terrorist threats, written or oral, against school officials and/or school property (Education Code 48900.7)

Pursuant to Education Code 48900.7, the making of a terrorist threat includes any written or oral statement by a person who willfully threatens to commit a crime which will result in death, great bodily injury to another person or property damage in excess of \$1,000, with the specific intent that the statement is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, or for the protection of school district property, or the personal property of the person threatened or his or her immediate family.

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

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

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

- a. Committed sexual harassment as defined in Education Code 212.5 (Education Code 48900.2)
- b. Caused, attempted to cause, threatened to cause, or participated in an act of hate violence as defined in Education Code 233 (Education Code 48900.3)
- c. Intentionally engaged in harassment, threats or intimidation against District personnel or students that is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting classwork, creating substantial disorder, and invading the rights of school personnel or students by creating an intimidating or hostile educational environment (Education Code 48900.4) (also, see Item o. above)
- d. Made terroristic threats against school officials or school property, or both (Education Code 48900.7) (see definition under Item s.)

The Superintendent or principal may use his/her discretion to provide alternatives to suspension or expulsion, including, but not limited to, counseling and an anger management program, for a pupil subject to discipline under Education Code 48900, 48900.2, 48900.3, 48900.4, and 48900.7.

A student may be suspended or expelled for any of the acts listed above if the act is related to school activity or school attendance occurring at any District school under the jurisdiction of the Superintendent or principal or within any other school district, including but not limited to the following circumstances (Education Code 48900):

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

### **Suspension by Superintendent, Principal or Principal's Designee**

The Superintendent, principal or principal's designee may suspend a student from a school for not more than five consecutive days unless the suspension is extended pending expulsion (Education Coe 48911).

The Superintendent or designee shall immediately suspend any student found at school or at a school activity to be (Education Code 48915):

1. Possessing, as verified by a District employee, or selling or otherwise furnishing a firearm, unless the student had obtained prior written permission to possess the item from a certificated school employee, with the principal or designee's concurrence
2. Brandishing a knife, as defined in Education Code 48915(g), at another person
3. Unlawfully selling a controlled substance listed in Health and Safety Code 1105311058
4. Committing or attempting to commit a sexual assault or committing a sexual battery as defined in item "n" under "Grounds for Suspension and Expulsion" above
5. Possession of an explosive as defined in 18 USC 921

~~Suspension also may be imposed upon~~ A student shall not be suspended for a first offense unless the Superintendent, principal or designee determines the student violated items a-e listed in "Grounds for Suspension and Expulsion" above, ~~only when other means of correction fail to bring about proper conduct or~~ when the student's presence causes a danger to persons or property or threatens to disrupt the instructional process. (Education Code 48900.5)

Other means of correction should be considered prior to suspension, which include, but are not limited to, the following:

1. A conference between school personnel, the pupil's parent or guardian, and the pupil.
2. Referrals to the school counselor, psychologist, social worker, child welfare attendance personnel, or other school support service personnel for case management and counseling.
3. Study teams, guidance teams, resource panel teams, or other intervention-related teams that assess the behavior, and develop and implement individualized plans to address the behavior in partnership with the pupil and his or her parents.
4. Referral for a comprehensive psychosocial or psychoeducational assessment, including for purposes of creating an individualized education program, or a plan adopted pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794(a)).
5. Enrollment in a program for teaching prosocial behavior or anger management.
6. Participation in a restorative justice program.

7. A positive behavior support approach with tiered interventions that occur during the schoolday on campus.
8. After-school programs that address specific behavioral issues or expose pupils to positive activities and behaviors, including, but not limited to, those operated in collaboration with local parent and community groups.
9. Community Service pursuant to AR 5144.

A student may be suspended from school for not more than 20 school days in any school year, unless for purposes of adjustment a student enrolls in or is transferred to another regular school, an opportunity school, or continuation school or class, in which case suspension shall not exceed 30 days in any school year. However, this restriction on the number of days of suspension does not apply when the suspension is extended pending an expulsion. (Education Code 48903, 48912)

The Superintendent or designee may count suspensions that occur while a student is enrolled in another school district toward the maximum number of days for which a student may be suspended in any school year. (Education Code 48903)

Suspensions shall be initiated according to the following procedures:

1. Informal Conference: Suspension shall be preceded by an informal conference conducted by the principal, designee or the Superintendent with the student and, whenever practicable, the teacher, supervisor or school employee who referred the student to the principal. At the conference, the student shall be informed of the reason for the disciplinary action and the evidence against him/her; the student shall be given the opportunity to



present his/her version and evidence in support of his/her defense. (Education Code 48911(b))

This conference may be omitted if the principal, designee or the Superintendent determines that an emergency situation exists. An "emergency situation" involves a clear and present danger to the lives, safety or health of students or school personnel. If a student is suspended without this conference, both the parent / guardian and student shall be notified of the student's right to return to school for the purpose of a conference. The conference shall be held within two school days, unless the student waives his/her right to it or is physically unable to attend for any reason. In such case, the conference shall be held as soon as the student is physically able to return to school. (Education Code 48911(c))

2. Administrative Actions: All requests for student suspension are to be processed by the principal or designee of the school in which the student is enrolled at the time of the misbehavior. A school employee shall report the suspension, including the name of the student and the cause for the suspension, to the Superintendent or designee.
3. Notice to Parents/Guardians: At the time of the suspension, a school employee shall make a reasonable effort to contact the parent/guardian by telephone or in person. Whenever a student is suspended, the parent/guardian shall be notified in writing of the suspension. (Education Code 48911). This notice shall state the specific offense committed by the student. (Education Code 48900.8). In addition, the notice may also state the date and time when the student may return to school. If school officials wish to ask the parent/guardian to confer regarding matters pertinent to the suspension, the notice may add that state law requires the parent/guardian to respond to such requests without delay.

4. Parent/Guardian Conference: Whenever a student is suspended, school officials may meet with the parent/guardian to discuss the causes and duration of the suspension, the school policy involved and any other pertinent matter (Education Code 48914).

While the parent/guardian is required to respond without delay to a request for a conference about a student's behavior, no penalties may be imposed on the student for the failure of the parent/guardian to attend such a conference. The student may not be denied readmission solely because the parent/guardian failed to attend. (Education Code 48911)

5. Extension of Suspension: If the Board of Education is considering the expulsion of a suspended student from any school or the suspension of a student for the balance of the semester from continuation school, the Superintendent or designee may, in writing, extend the suspension until such time as the Board has made a decision (Education Code 48911(g)).

Any extension of the original period of suspension shall be preceded by notice of such extension with an offer to hold a conference concerning the extension, giving the student an opportunity to be heard. This conference may be held in conjunction with a meeting requested by the student or parent/guardian to challenge the original suspension. Extension of the suspension may be made only if the Superintendent or designee determines, following a meeting in which the student and the student's parent/guardian were invited to participate, that the student's presence at the school or at an alternative school would endanger persons or property or threaten to disrupt the instructional process (Education Code 48911).

### **Authority to Expel**

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

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

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

### **Mandatory Recommendation for Expulsion**

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

1. Causing serious physical injury to another person, except in self-defense
2. Possession of any knife as defined in Education Code 48915(g), explosive or other dangerous object of no reasonable use to the student

3. Unlawful possession of any controlled substance, as listed in Health and Safety Code 11053-11058, except for the first offense for the possession of not more than one ounce of marijuana, other than concentrated cannabis
4. Robbery or extortion
5. Assault or battery, as defined in Penal Code 240 and 242, upon any school employee

#### **Mandatory Recommendation and Mandatory Expulsion**

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

1. Possessing, as verified by a District employee, or selling or otherwise furnishing a firearm, unless the student had obtained prior written permission to possess the item from a certificated school employee, with the principal or designee's concurrence
2. Brandishing a knife as defined in Education Code 48915(g) at another person
3. Unlawfully selling a controlled substance listed in Health and Safety Code 1105311058
4. Committing or attempting to commit a sexual assault or committing a sexual battery as defined in item #14 under "Grounds for Suspension and Expulsion" above
5. Possessing an explosive as defined in 18 USC 921

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

### **Student's Right to Expulsion Hearing**

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

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

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

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

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

### **Rights of Complaining Witness**

An expulsion hearing involving allegations of sexual assault or sexual battery may be postponed for one school day in order to accommodate the special physical, mental or emotional needs of a student who is the complaining witness (Education Code 48918.5).

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

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

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

### **Written Notice of the Expulsion Hearing**

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

1. The date and place of the hearing
2. A statement of the specific facts, charges and offense upon which the proposed expulsion is based
3. A copy of District disciplinary rules which relate to the alleged violation
4. Notification of the student's or parent/guardian's obligation, pursuant to Education Code 48915.1, to provide information about the student's status in the District to any other district in which the student seeks enrollment. This obligation applies when a student is expelled for acts other than those described in Education Code 48915(a) or (c).
5. The opportunity for the student or the student's parent/guardian to appear in person or to employ and be represented by counsel or a non-attorney advisor.
6. Legal counsel means an attorney or lawyer who is admitted to the practice of law in California and is an active member of the State Bar of California.
7. Non-attorney advisor means an individual who is not an attorney or lawyer, but who is familiar with the facts of the case, and has been selected by the student or student's parent/guardian to provide assistance at the hearing.
8. The right to inspect and obtain copies of all documents to be used at the hearing

9. The opportunity to confront and question all witnesses who testify at the hearing
10. The opportunity to question all evidence presented and to present oral and documentary evidence on the student's behalf, including witnesses

### **Conduct of Expulsion Hearing**

1. Closed Session: Notwithstanding the provisions of Government Code 54953 and Education Code 35145, the Board shall conduct a hearing to consider the expulsion of the student in a session closed to the public unless the student requests in writing at least five days prior to the hearing that the hearing be a public meeting. If such request is made, the meeting shall be public unless another student's privacy rights would be violated.

Whether the expulsion hearing is held in closed or public session, the Board may meet in closed session to deliberate and determine whether or not the student should be expelled. If the Board admits any other person to this closed session, the parent/guardian, the student, and the counsel of the student shall also be allowed to attend the closed session. (Education Code 48918(c))

If a hearing that involves a charge of sexual assault or sexual battery is to be conducted in public, a complaining witness shall have the right to have his/her testimony heard in closed session when testifying in public would threaten serious psychological harm to the witness and when there are no alternative procedures to avoid the threatened harm, including but not limited to videotaped deposition or contemporaneous examination in another place communicated to the hearing room by closed-circuit television. (Education Code 48918(c))



2. Record of Hearing: A record of the hearing shall be made and may be maintained by any means, including electronic recording, as long as a reasonably accurate and complete written transcription of the proceedings can be made. (Education Code 48918(g))
3. Subpoenas: Before commencing a student expulsion hearing, the Board may issue subpoenas, at the request of either the student or the Superintendent or designee, for the personal appearance at the hearing of any person who actually witnessed the action that gave rise to the recommendation for expulsion. After the hearing has commenced, the Board or the hearing officer or administrative panel may issue such subpoenas at the request of the student or the County Superintendent of Schools or designee. All subpoenas shall be issued in accordance with the Code of Civil Procedure 1985-1985.2 and enforced in accordance with Government Code 11455.20 (Education Code 48918(i)).

Any objection raised by the student or the Superintendent or designee to the issuance of subpoenas may be considered by the Board in closed session, or in open session if so requested by the student, before the meeting. The Board's decision in response to such an objection shall be final and binding. (Education Code 48918(i))

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

4. Presentation of Evidence: While technical rules of evidence do not apply to expulsion hearings, evidence may be admitted and used as proof only if it is the kind of evidence on

which reasonable persons can rely in the conduct of serious affairs. The decision of the Board to expel must be supported by substantial evidence that the student committed any of the acts listed in "Grounds for Suspension and Expulsion" above.

Findings of fact shall be based solely on the evidence at the hearing. While no evidence shall be based solely on hearsay, sworn declarations may be admitted as testimony from witnesses whose disclosure of their identity or testimony at the hearing may subject them to an unreasonable risk of physical or psychological harm (Education Code 48918(f) and (h)).

In cases where a search of a student's person or property has occurred, evidence describing the reasonableness of the search shall be included in the hearing record. (cf. 5145.12 - Search and Seizure)

5. Testimony by Complaining Witnesses: The following procedures shall be observed when hearings involve allegations of sexual assault or sexual battery by a student: (Education Code 48918)
  - a. Any complaining witness shall be given five days' notice before being called to testify.
  - b. Any complaining witness shall be entitled to have up to two adult support persons, including but not limited to a parent/guardian or legal counsel, present during his/her testimony.
  - c. Before a complaining witness testifies, support persons shall be admonished that the hearing is confidential.

- d. The person presiding over the hearing may remove a support person whom he/she finds is disrupting the hearing.
- e. If one or both support persons are also witnesses, the hearing shall be conducted according to Penal Code 868.5.
- f. Evidence of specific instances of prior sexual conduct of a complaining witness shall be presumed inadmissible and shall not be heard unless the person conducting the hearing determines that extraordinary circumstances require the evidence to be heard. Before such a determination is made, the complaining witness shall be given notice and an opportunity to oppose the introduction of this evidence. In the hearing on the admissibility of this evidence, the complaining witness shall be entitled to be represented by a parent/guardian, legal counsel or other support person. Reputation or opinion evidence regarding the sexual behavior of a complaining witness shall not be admissible for any purpose.
- g. In order to facilitate a free and accurate statement of the experiences of the complaining witness and to prevent discouragement of complaints, the District shall provide a nonthreatening environment.
  - (1) The District shall provide a room separate from the hearing room for the use of the complaining witness before and during breaks in testimony.
  - (2) At the discretion of the person conducting the hearing, the complaining witness shall be allowed reasonable periods of relief from examination and cross-examination during which he/she may leave the hearing room.

- (3) The person conducting the hearing may:
  - (a) Arrange the seating within the hearing room so as to facilitate a less intimidating environment for the complaining witness
  - (b) Limit the time for taking the testimony of a complaining witness to the hours he/she is normally in school, if there is no good cause to take the testimony during other hours
  - (c) Permit one of the support persons to accompany the complaining witness to the witness stand
- 6. Decision Within 10 Days: The Board's decision on whether to expel a student shall be made within 10 school days after the conclusion of the hearing, unless the student requests in writing that the decision be postponed. (Education Code 48918(a))
- 7. Decision Within 40 Days: If the Board does not meet on a weekly basis, its decision on whether to expel a student shall be made within 40 school days after the student is removed from his/her school of attendance, unless the student requests in writing that the decision be postponed. (Education Code 48918(a))

#### **Final Action by the Board**

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

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

Upon ordering an expulsion, the Board shall set a date when the student shall be reviewed for readmission to a school within the District. For a student expelled for an act listed under "Mandatory Recommendation and Mandatory Expulsion" above, this date shall be one year from the date the expulsion occurred, except that the Board may set an earlier date on a case-by-case basis. For a student expelled for other acts, this date shall be no later than the last day of the semester following the semester in which the expulsion occurred. (Education Code 48916)

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

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

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

### **Written Notice to Expel**

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

1. The specific offense committed by the student for any of the causes for suspension or expulsion listed in Education Code 48900(a)-(p), Education Code 48900.248900.4 and Education Code 48915(c) (Education Code 48900.8)
2. The fact that a description of readmission procedures will be made available to the student and his/her parent/guardian (Education Code 48916)
3. Notice of the right to appeal the expulsion to the County Board of Education (Education Code 48918)
4. Notice of the alternative educational placement to be provided to the student during the time of expulsion (Education Code 48918)
5. Notice of the student's or parent/guardian's obligation to inform any new district in which the student seeks to enroll of the student's status with the expelling district, pursuant to Education Code 48915.1 (Education Code 48918)

#### **Decision Not to Enforce Expulsion Order**

1. The student's pattern of behavior
2. The seriousness of the misconduct

3. The student's attitude toward the misconduct and his/her willingness to follow a rehabilitation program

The suspension of the enforcement of an expulsion shall be governed by the following:  
(Education Code 48917)

1. The Board may, as a condition of the suspension of enforcement, assign the student to a school, class or program appropriate for the student's rehabilitation. This rehabilitation program may provide for the involvement of the student's parent/guardian in the student's education. However, a parent/guardian's refusal to participate in the rehabilitation program shall not be considered in the Board's determination as to whether the student has satisfactorily completed the rehabilitation program.
2. During the period when enforcement of the expulsion order is suspended, the student shall be on probationary status.
3. The suspension of the enforcement of an expulsion order may be revoked by the Board if the student commits any of the acts listed under "Grounds for Suspension and Expulsion" above or violates any of the District's rules and regulations governing student conduct.
4. When the suspension of the enforcement of an expulsion order is revoked, a student may be expelled under the terms of the original expulsion order.
5. Upon satisfactory completion of the rehabilitation assignment, the Board shall reinstate the student in a District school. Upon reinstatement, the Board may order the expunging of any or all records of the expulsion proceedings.

6. Suspension of the enforcement of an expulsion order shall not affect the time period and requirements for the filing of an appeal of the expulsion order with the County Board of Education.
7. The Superintendent or designee shall send written notice of any decision to suspend the enforcement of an expulsion order during a period of probation to the student or parent/guardian. The notice shall also inform the parent/guardian of the right to appeal the expulsion to the County Board of Education. (Education Code 48918(j)).

### **Right to Appeal**

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

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

### **Post-Expulsion Placements**

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

1. Appropriately prepared to accommodate students who exhibit discipline problems



2. Not provided at a comprehensive middle, junior or senior high school or at any elementary school, unless the program is offered at a community day school established at such a site
3. Not housed at the school site attended by the student at the time of suspension

When the placement described above is not available, and when the County Superintendent of Schools so certifies, students expelled for acts described in items #6 through #13 and #18 through #20 under "Grounds for Suspension and Expulsion" above may be instead referred to a program of study that is provided at another comprehensive middle, junior, or senior high school, or at an elementary school (Education Code 48915).

The program for a student expelled from any of grades K-6 shall not be combined or merged with programs offered to students in any of grades 7-12. (Education Code 48916.1)

### **Readmission After Expulsion**

Readmission procedures shall be as follows:

1. On the date set by the Board when it ordered the expulsion, the District shall consider readmission of the student. (Education Code 48916)
2. The Superintendent or designee shall hold a conference with the parent/guardian and the student. At the conference the student's rehabilitation plan shall be reviewed and the Superintendent or designee shall verify that the provisions of this plan have been met.

School regulations shall be reviewed and the student and parent/guardian shall be asked to indicate in writing their willingness to comply with these regulations.

3. The Superintendent or designee shall transmit to the Board his/her recommendation regarding readmission. The Board shall consider this recommendation in closed session if information would be disclosed in violation of Education Code 4907349079. If a written request for open session is received from the parent/guardian or adult student, it shall be honored.
4. If the readmission is granted, the Superintendent or designee shall notify the student and parent/guardian, by registered mail, of the Board's decision regarding readmission.
5. The Board may deny readmission only if it finds that the student has not satisfied the conditions of the rehabilitation plan or that the student continues to pose a danger to campus safety or to other district students or employees (Education Code 48916).
6. If the Board denies the readmission of a student, the Board shall determine either to continue the student's placement in the alternative educational program initially elected or to place the student in another program that serves expelled students, including placement in a county community school (Education Code 48916).
7. The Board shall provide written notice to the expelled student and parent/guardian describing the reasons for denying readmittance into the regular program. This notice shall indicate the Board's determination of the educational program which the Board has chosen. The student shall enroll in that program unless the parent/guardian chooses to enroll the student in another school district (Education Code 48916).

#### **Maintenance of Records**

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

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

### **Notifications to Law Enforcement Authorities**

Prior to the suspension or expulsion of any student, the principal or designee shall notify appropriate city or county law enforcement authorities of any student acts of assault which may have violated Penal Code 245. (Education Code 48902). The principal or designee also shall notify appropriate city or county law enforcement authorities of any student acts which may involve the possession or sale of narcotics or of a controlled substance or possession of weapons or firearms in violation of Penal Code 626.9 and 626.10 (Education Code 48902).

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

### **Outcome Data**

The Superintendent or designee shall maintain the following data and report such data annually to the California Department of Education, using forms supplied by the California Department of Education: (Education Code 48900.8, 48916.1)

1. The number of students recommended for expulsion
2. The specific grounds for each recommended expulsion
3. Whether the student was subsequently expelled
4. Whether the expulsion order was suspended
5. The type of referral made after the expulsion
6. The disposition of the student after the end of the expulsion period

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