

School Discipline



CALIFORNIA FOSTER YOUTH EDUCATION TASK FORCE

INTRODUCTION

Suspensions and expulsions are two types of school discipline. Both are governed by sections 48900-27 of the Education Code (“EC”). The law is available online at www.leginfo.ca.gov/calaw.html.

A suspension is a short-term removal from school. *EC § 48925(d)*. An expulsion is a longer-term removal from an entire school district. *EC § 48925(b)*.

In order to lawfully suspend or expel a student, the student’s school district must prove that the student committed an act that is both prohibited by the Education Code and related to school activities or school attendance. *EC § 48900(s)*.

Prohibited Acts

The descriptions of prohibited acts appear in sections 48900, 48900.2-.4, and 48900.7 of the California Education Code. Students can be suspended or expelled for many acts, but should *not* be suspended or expelled for being truant, tardy, or absent from school activities. *EC § 48900(w)*.

Connection to School

The act must be related to school activities or school attendance in any school district. “Related” includes acts committed on school grounds, while the student is going to or coming from school, during the student’s lunch period (on or off campus), and during or while the student is going to or coming from a school-sponsored activity. *EC § 48900(s)*.

Alternatives to Discipline

A school district has discretion to use alternatives to suspension and expulsion, such as counseling, anger-management programs, and community service during non-school hours. *EC §§ 48900(v), 48900.6*.

Students with Disabilities

Students with disabilities have different rights regarding school discipline.

If a student is or might be eligible for special education, please see the Special Ed. Discipline Factsheet, as additional protections may apply.

SUSPENSIONS

Suspension Procedures

A suspension must be preceded by an informal conference unless an “emergency situation” exists. At the conference, the

student must be informed of the reason for the disciplinary action and the evidence against her/him, as well as given a chance to present her/his version and evidence in her/his defense. *EC § 48911(b)-(c)*.

An “emergency situation” means a school administrator has determined that there is “a clear and present danger to the life, safety, or health of pupils or school personnel.” In this situation, the student may be suspended without a pre-suspension conference but must be notified of the right to return to school for a conference to be held within 2 school days. If the student is unable to attend a conference within 2 school days, the conference must be held as soon as the student is able to return. *EC § 48911(c)*.

At the time of a suspension, the school must make a reasonable effort to contact the student’s educational rights-holder (see *Educational Rights Factsheet*) by phone or in person. In addition, the educational rights-holder must be given written notice of the suspension, *EC § 48911(d)*, and may request a meeting with school officials to discuss the cause and duration of the suspension, the applicable school policies, and other pertinent matters. *EC § 48914*.

Although a school can request that an educational rights-holder attend a conference to discuss the student’s behavior, the school is prohibited from penalizing the student (including by delaying reinstatement in school) for the rights-holder’s failure to attend. *EC § 48911(f)*.

Limits on Suspensions

Schools generally are required to try other means of correcting a student’s behavior before imposing a suspension. However, a student can be suspended for a first offense for certain prohibited acts or if a school administrator determines that the student’s presence at school “causes a danger to persons or property or threatens to disrupt the instructional process.” *EC § 48900.5*.

If suspension is used, it should not, with few exceptions, exceed 5 consecutive school days or 20 days per school year.

Exceptions:

- A student may be suspended up to 30 total days in a school year if s/he is en-

rolled in or transfers to another school for disciplinary reasons. *EC § 48903*.

- A student who has been recommended for expulsion may be suspended through the time the school board makes its decision on the expulsion. Prior to extending the suspension, the school must hold a meeting to which the student and her/his educational rights-holder have been invited and must determine that the student’s presence at school or in an alternative school placement “would cause a danger to persons or property or a threat of disrupting the instructional process.” Any decision to extend a suspension in this way must be in writing. *EC § 48911(a), (g)*.

Work Missed During Suspension

A student may be required to complete assignments and tests missed during the suspension. *EC § 48913*. Work should be requested from the school for the student to complete while out of school on suspension.



Supervised Suspension Classroom

Some suspensions may be served in a supervised suspension classroom rather than off school grounds. The classroom must promote completion of school work and tests the student misses during the suspension, and appropriate counseling services must be made available. The school must notify the student’s educational rights-holder at the time it assigns the student to the suspension classroom. The notice must be in writing if the student will be in the suspension classroom for longer than one class period. *EC § 48911.1*.

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EXPULSIONS

School and district officials can *recommend* a student for expulsion, but only the governing board of a school district can *actually expel* a student. EC § 48918(a).

Discretion Not to Expel

For most acts that violate the Education Code, school officials have discretion not to recommend expulsion, and the school board has discretion not to expel. They can decide that expulsion would be inappropriate under the circumstances.

EC § 48915(a), (b), (e).

Mandatory Expulsions

However, the law requires expulsion for a small category of acts (often called zero-tolerance offenses). Those acts are firearm offenses, brandishing a knife at another person, selling controlled substances, committing or attempting sexual assault or battery, and possessing an explosive.

EC § 48915(c)-(d).

Expulsion Procedures

A student who is recommended for expulsion has due process rights. They include:

- The right to a **hearing** held within 30 school days of the date a school official determined the student committed the act, unless the student makes a written request to postpone the hearing. The student has a right to at least one 30-day postponement and can ask for more. EC § 48918(a).
- The right to receive **written notice** of the hearing at least 10 calendar days before the hearing. The notice must include the date and place of the hearing, a statement of the specific facts and charges that are the basis for the expulsion recommendation, a copy of the district's disciplinary rules, and a list of the student's and educational rights-holder's rights. EC § 48918(b).
- The right to bring a **lawyer or other advocate** to the hearing. EC § 48918(b)(5).
- The right to receive copies of the documents that will be used at the hearing, to question all **witnesses and evidence** at the hearing, and to bring her/his own witnesses and evidence to the hearing. EC § 48918(b)(5).
- The right to ask the school board to **subpoena witnesses**. EC § 48918(i).
- The right to receive the school board's **written decision** on the expulsion recommendation within 10 school days of the hearing or, in some situations, within 40 school days of the beginning of the suspen-

sion for the incident in question. EC § 48918(a), (j).

- If expelled, the right to receive **notice** of (1) the right to appeal and (2) the right to be educated while expelled. EC § 48918(j).

Necessary Findings

Generally, in order to expel a student, a school board must do the following things:

- Ensure that the student's due process rights, including timelines and procedures, were not violated.
- Find that the student committed a prohibited act that was related to school activities or school attendance.
- Except in the case of mandatory expulsions, find one or both of the following:
 - Other means of correction are not feasible or repeatedly have failed to bring about proper conduct.
 - Due to the nature of the act, the student's presence causes a continuing danger to the physical safety of the student or others. EC § 48915(b)-(e).

Appeals

If a school board orders expulsion, the student has up to 30 days from the date of the expulsion decision to appeal to the county board of education. EC § 48919. There are limited grounds for appeal (e.g., whether the hearing was fair, whether relevant evidence could not be produced or was excluded improperly) and many rules that must be followed in the appeals process. EC §§ 48919-23. There are no other administrative appeals above the county board of education level. EC § 48924.

Education During Expulsion

The school district must ensure that an educational program is provided to an expelled student for the entire period of the expulsion. EC §§ 48916.1, 48915(f). The written expulsion decision must specify the alternative educational placement. EC § 48918(j)(2).

Rehabilitation Plan

At the time of expulsion, the school board also must recommend a rehabilitation plan, which will be considered when the student applies for readmission to the district. The plan may include recommendations for improved academic performance, tutoring, job training, counseling, employment, community service, and other rehabilitative programs. EC § 48916(b). For expulsions related to controlled substances or alcohol, the school board may require, with

parental consent, enrollment in a drug rehabilitation program. EC § 48916.5.

Readmission After Expulsion

An expulsion order remains in effect until the school district orders readmission. The date when a student must be considered for readmission to the district must be set by the school board at the time of the expulsion decision. The date must be *no be later than*:

- For mandatory expulsions, 1 year from the date of the expulsion.
- For non-mandatory expulsions, the last day of the semester following the semester in which the expulsion occurred.
- For non-mandatory expulsions during summer sessions or intersessions of year-round programs, the last day of the semester following the summer session or intersession in which the expulsion occurred.

The school board may set a date earlier than these maximum time periods. EC § 48916(a).

A student should follow the district's rules and procedures for requesting readmission, which should be provided at the time of the expulsion decision. After the process is completed, the school board must readmit the student unless it finds that the student either failed to complete the rehabilitation plan or "continues to pose a danger to campus safety or to other pupils or employees of the school district." EC § 48916(c).

If readmission is denied, the school board must provide written notice of the reason (s) for the denial and offer the student an educational program. EC § 48916(d)-(e).

Enrollment In Another District

A student may apply for enrollment in another school district during the period of expulsion. S/he must disclose the ongoing expulsion at the time of enrollment. Certain procedures must be followed, including a hearing to determine whether the student poses a danger to students or staff of the district. Enrollment is not guaranteed, and any enrollment that is permitted may be limited to certain types of educational programs or dependent on specified conditions. EC §§ 48915.1-2.

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Suspended Expulsions

A school board can decide to expel a student but suspend enforcement of the expulsion order. A “suspended expulsion” is an actual expulsion that puts a student on probationary status and allows her/him to enroll in an educational program deemed appropriate by the school board to rehabilitate her/him. *EC § 48917(a), (c).*

If the student violates any behavioral rules during the probationary period, the school board can revoke the suspension and expel her/him under the terms of the original expulsion order. *EC § 48917(d).*

If the student satisfactorily completes the rehabilitation program, s/he must be reinstated in a district school, and the school board may order the expulsion records to be expunged. *EC § 48917(e).*

A school board’s decision to suspend enforcement of an expulsion order does not affect the timeline for appealing the expulsion to the county board of education. If a student wishes to appeal the expulsion, s/he must do so within 30 days of the expulsion decision regardless of whether the expulsion order is suspended; otherwise, s/he loses the right to appeal. *EC § 48917(f).*

INVOLUNTARY TRANSFERS

In some situations, a student may be transferred against her/his wishes to the school district’s continuation school or community day school for reasons that may or may not be related to school discipline. Specific procedures for and rights related to involuntary transfers must appear in the school district’s written policies.

Transfer to Continuation Schools

A school district may transfer a student to its continuation school for certain prohibited acts or for habitual truancy or attendance problems. Prior to the transfer, the student and her/his educational rights-holder are entitled to written notice and a meeting to discuss the reason(s) for the proposed transfer and to present and question relevant evidence and witnesses. A student should not be transferred involuntarily unless other means have been tried and have failed to improve the student’s conduct or unless the student committed a prohibited act and her/his “presence causes a danger to persons or property or

threatens to disrupt the instructional process.” A final transfer decision must be in writing and may be subject to periodic review. A transfer generally should not extend past the semester following the semester in which the act(s) leading directly to the transfer occurred. *EC § 48432.5.*

Transfer To Community Day Schools

A school district may transfer a student to its community day school if s/he has been expelled, has been referred for probation under the California Welfare & Institutions Code, or has been referred to the community day school by a school attendance review board or other district-level referral process. *EC § 48662.*

DISCIPLINE RECORDS

A student’s educational rights-holder has a right to add to the student’s school record a written statement or response to any disciplinary action that appears in the student’s file. *EC § 49072.*

The California Foster Youth Education Task Force is a coalition of organizations dedicated to improving educational outcomes for foster youth. For more information, please visit our website at www.cfyetf.org or contact Mia Stizzo at mia.stizzo@cfpic.org.

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