

CSBA Sample

Board Policy

Suspension And Expulsion/Due Process

USE CSBA WITH REVISIONS

BP 5144.1

Students

***Note: Education Code 35291 requires the Governing Board to prescribe rules and regulations for maintaining discipline in the schools under its jurisdiction. In addition, Education Code 48918 mandates the setting of rules and regulations for student expulsion as specified in this Board policy and the accompanying administrative regulation. ***

***Note: While recognizing that suspension or expulsion of students is sometimes necessary, legislative, administrative, regulatory, civic, and educational leaders are united in the belief that instructional time should be used for student learning purposes and that school discipline should be imposed in a way that, as much as possible, would not exclude students from school or limit their ability or opportunity to learn. Pursuant to Education Code 48900.5, a district is not authorized to suspend a student for certain specified violations unless other means of correction have failed to bring about proper conduct. Such other means of correction include, but are not limited to, conferences between school personnel and the student and his/her parents/guardians; use of study, guidance, or other intervention teams to develop a plan to address the behavior in partnership with the student; and participation in a restorative justice program. Education Code 48900.5 also authorizes a district to document in a student's records the alternative means of correction used to address the student's behavior. For further information about specific disciplinary strategies, including alternatives to class or school removals, see BP/AR 5144 - Discipline. ***

***Note: In addition, the U.S. Department of Justice's Civil Rights Division (DOJ) and the U.S. Department of Education's Office for Civil Rights (OCR), in their joint January 2014 Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline, state that studies have suggested a correlation between exclusionary discipline policies and practices (such as suspension and expulsion) and an array of serious educational, economic, and social problems, including school avoidance and diminished educational engagement, decreased academic achievement, increased behavior problems, and increased likelihood of dropping out, substance abuse, and involvement with the juvenile justice system. Consequently, they recommend that districts adopt alternative disciplinary measures that provide students with appropriate interventions and supports as a means for preventing and addressing student misbehaviors. ***

***Note: The need to implement means of correction other than suspension and expulsion is underscored by Education Code 52060-52077, which require districts to adopt and annually update a local control and accountability plan (LCAP) including descriptions of the district's and each school's goals for improving student engagement and school climate, as measured by rates of student absenteeism, suspension and expulsion, and other relevant measures identified by the Board. ***

The Governing Board desires to provide district students access to educational opportunities in an orderly school environment that protects their safety and security, ensures their welfare and well-being, and promotes their learning and development. The Board shall develop rules and regulations setting the standards of behavior expected of district students and the disciplinary processes and procedures for addressing violations of those standards, including suspension and/or expulsion.

(cf. 5131 - Conduct)
(cf. 5131.1 - Bus Conduct)
(cf. 5131.2 - Bullying)

The grounds for suspension and expulsion and the procedures for considering, recommending, and/or implementing suspension and expulsion shall be only those specified in law, in this policy, and in the accompanying administrative regulation.

***Note: Pursuant to Education Code 48900(s), a student may be subject to discipline only when the violation is related to a school activity or school attendance as specified below. A student may also be disciplined for violations committed away from school if it is related to a school activity or to school attendance. For example, Education Code 48900 defines bullying by means of an electronic act as including an act that originates off campus; see the accompanying administrative regulation and BP/AR 5131.2 - Bullying. Another example is the hostile school environment which a victim may suffer from sexual harassment that occurs off campus; see BP/AR 5145.7 - Sexual Harassment. ***

Except when otherwise permitted by law, a student may be suspended or expelled only when his/her behavior is related to a school activity or school attendance occurring within any district school or another school district, regardless of when it occurs, including, but not limited to, the following: (Education Code 48900(s))

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

(cf. 5112.5 - Open/Closed Campus)

4. During, going to, or coming from a school-sponsored activity

5. Bullying by means of an electronic act includes an act that originates off campus.

Comment [B1]: This language was approved by the Board on 8/27/14

***Note: The following paragraph addresses the problem of unlawful discrimination in the administration of student discipline. In their joint January 2014 Dear Colleague Letter on the

Nondiscriminatory Administration of School Discipline, the DOJ and OCR noted that, based on the civil rights data collection conducted by OCR, students of certain racial or ethnic groups tended to be disciplined more, and sometimes more harshly, than their similarly situated peers in violation of federal nondiscrimination laws. The letter warned that any district determined to have engaged in unlawful discrimination could be subject to OCR investigation and significant remedial action. ***

District staff shall enforce the rules concerning suspension and expulsion of students fairly, consistently, equally, and in accordance with the district's nondiscrimination policies.

(cf. 0410 - Nondiscrimination in District Programs and Activities)

Appropriate Use of Suspension Authority

***Note: Education Code 48900.5 requires districts to use other means of correction instead of suspension or expulsion except when a student commits certain enumerated offenses. The following section reflects legislative intent regarding appropriate use of suspension as a means of disciplining students and may be modified to reflect district practice. ***

Except when a student's act violates Education Code 48900(a)-(e), as listed in items #1-5 under "Grounds for Suspension and Expulsion: Grades K-8" of the accompanying administrative regulation, or when his/her presence causes a danger to others, suspension shall be used only when other means of correction have failed to bring about proper conduct. (Education Code 48900.5, 48900.6)

Comment [B2]: PSD is a K-8 District

Comment [B3]: New and Revised language due to AB 420

(cf. 1020 - Youth Services)

(cf. 5138 - Conflict Resolution/Peer Mediation)

(cf. 5144 - Discipline)

(cf. 6142.4 - Service Learning/Community Service Classes)

(cf. 6164.2 - Guidance/Counseling Services)

(cf. 6164.5 - Student Success Teams)

***Note: The following optional paragraph may be revised to reflect district practice. ***

A student's parents/guardians shall be notified as soon as possible when there is an escalating pattern of misbehavior that could lead to on-campus or off-campus suspension.

***Note: Education Code 48900(k), as amended by AB 420 (Ch. 660, Statutes of 2014), prohibits a district from suspending students in grades K-3 for disruption or willful defiance. As amended, Education Code 48900(k) authorizes but does not require a district to suspend students in grades 4-12 for disruption or willful defiance. Even with this authority, districts should be careful in using these grounds, as available data have indicated a disproportionate use with certain student subgroups. Option 1 below is for use by any district that chooses to suspend students in grades 4-12 for disruption and/or willful defiance as authorized pursuant to Education Code 48900(k). Any district that chooses to eliminate disruption and willful defiance as reasons for

suspending any of its students from school should select Option 2 below. Such districts should also delete the first paragraph in the section titled "Additional Grounds for Suspension and Expulsion: Grades 4-12," in the accompanying administrative regulation. ***

***Note: Each option below reflects an exception granted to teachers pursuant to Education Code 48910 to suspend students, including a K-3 student, from class; see section "Suspension from Class by a Teacher" in the accompanying administrative regulation. ***

OPTION 1: No student in grades K-3 may be suspended for disruption or willful defiance, except by a teacher pursuant to Education Code 48910. (Education Code 48900)

***Note: The following optional paragraph reflects the Legislature's intent, expressed in Education Code 48900, concerning disciplinary actions against truant, tardy, or absent students. Since these are not enumerated offenses, a district does not have the authority to suspend or expel students for committing any of these acts. ***

Students shall not be suspended or expelled for truancy, tardiness, or absenteeism from assigned school activities.

(cf. 5113 - Absences and Excuses)
(cf. 5113.1 - Chronic Absence and Truancy)

On-Campus Suspension

***Note: As an alternative to off-campus suspension, Education Code 48911.1 authorizes a supervised suspension classroom program for students who pose no imminent danger to anyone at school and who have not been recommended for expulsion, as specified below. Education Code 48911.2 states that, if the number of students suspended during the prior year exceeds 30 percent of the school's enrollment, the district should consider implementing this program and/or another program of on-campus progressive discipline. However, Education Code 48900.5 requires a district to try other means of correction and document that those means have failed to bring about proper conduct before imposing a supervised suspension. ***

***Note: The following optional section is for use by districts implementing a supervised suspension classroom program. Such districts may continue to claim funding apportionments for students so assigned, provided they meet specific criteria which are set forth under "Supervised Suspension Classroom" in the accompanying administrative regulation. A district does not receive funding for off-campus suspensions. ***

Except where a supervised suspension is permitted by law for a student's first offense, supervised suspension shall be imposed only when other means of correction have failed to bring about proper conduct. (Education Code 48900.5)

Deleted: OPTION 2: No student may be suspended for disruption or willful defiance, except by a teacher pursuant to Education Code 48910. (Education Code 48900)¶

Comment [B4]: The following optional section was deleted because PSD does not have a supervised suspension classroom program.

Deleted: To ensure the proper supervision and ongoing learning of students who are suspended for any of the reasons enumerated in Education Code 48900 and 48900.2, but who pose no imminent danger or threat to anyone at school and for whom expulsion proceedings have not been initiated, the Superintendent or designee shall establish a supervised suspension classroom program which meets the requirements of law.¶

Authority to Expel

A student may be expelled only by the Board. (Education Code 48918(j))

As required by law, the Superintendent or principal shall recommend expulsion and the Board shall expel any student found to have committed any of the following "mandatory recommendation and mandatory expulsion" acts at school or at a school activity off school grounds: (Education Code 48915)

1. Possessing a firearm which is not an imitation firearm, as verified by a certificated employee, unless the student had obtained prior written permission to possess the item from a certificated school employee, with the principal or designee's concurrence

(cf. 5131.7 - Weapons and Dangerous Instruments)

2. Selling or otherwise furnishing a firearm

3. Brandishing a knife at another person

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

5. Committing or attempting to commit a sexual assault as defined in Penal Code 261, 266c, 286, 288, 288a, or 289, or committing a sexual battery as defined in Penal Code 243.4

6. Possessing an explosive as defined in 18 USC 921

For all other violations listed in the accompanying administrative regulation under "Grounds for Suspension and Expulsion: Grades K-~~8~~" and "Additional Grounds for Suspension and Expulsion: Grades 4-~~8~~," the Superintendent or principal shall have the discretion to recommend expulsion of a student. If expulsion is recommended, the Board shall order the student expelled only if it makes a finding of 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

A vote to expel a student shall be taken in a public session.

***Note: Pursuant to Education Code 48917, the Board may decide to suspend the enforcement of an order for expulsion as long as a student satisfies specific conditions. See the accompanying administrative regulation for criteria. In addition, the Attorney General opined in 80 Ops.Cal.Atty.Gen. 85 (1997) that the enforcement of an expulsion order may be suspended even in those cases where the student has committed an offense for which expulsion is required by law.

Comment [B5]: PSD is a K-8 School District

Deleted: 12

Comment [B6]: PSD is a K-8 School District

Deleted: 12

Comment [B7]: This section contains new language to align with AB 420

Legal counsel should be consulted as appropriate. ***

The Board may vote to suspend the enforcement of the expulsion order pursuant to the requirements of law and the accompanying administrative regulation. (Education Code 48917)

***Note: Education Code 48900(k), as amended by AB 420 (Ch. 660, Statutes of 2014), prohibits a district from expelling any student for disruption or willful defiance. ***

No student shall be expelled for disruption or willful defiance. (Education Code 48900)

Comment [B8]: New language to align with AB 420

Due Process

The Board shall provide for the fair and equitable treatment of students facing suspension and/or expulsion by affording them their due process rights under the law. The

Superintendent or designee shall comply with procedures for notices, hearings, and appeals as specified in law and administrative regulation. (Education Code 48911, 48915, 48915.5, 48918)

(cf. 5119 - Students Expelled from Other Districts)

(cf. 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities))

Maintenance and Monitoring of Outcome Data

***Note: Pursuant to Education Code 48900.8 and 48916.1, the district is required to maintain data related to suspensions and expulsions and to report such data to the Superintendent of Public Instruction. In addition, pursuant to Education Code 52060, a district is required to address school climate in its LCAP, by including an assessment of baseline data regarding suspension and expulsion rates by student subgroups and schools and setting goals for improving those rates and other related factors. The DOJ and OCR, in their joint January 2014 Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline, recommend that districts maintain disaggregated discipline information to ensure transparency and facilitate community discussion. ***

The Superintendent or designee shall annually present to the Board a report of the outcome data which the district is required to collect pursuant to Education Code 48900.8 and 48916.1, including the number of students recommended for expulsion, the grounds for each recommended expulsion, the actions taken by the Board, the types of referral made after each expulsion, and the disposition of the students after the expulsion period.

The report shall be disaggregated by school and by numerically significant student subgroups, including, but not limited to, ethnic subgroups, socioeconomically disadvantaged students, English learners, foster youth, and students with disabilities. The report also shall include information about whether and how the district is meeting its goals for improving school climate as specified in its local control and accountability plan.

(cf. 0460 - Local Control and Accountability Plan)

Legal Reference:

EDUCATION CODE

212.5 Sexual harassment

233 Hate violence

1981-1981.5 Enrollment of students in community school

17292.5 Program for expelled students

32261 Interagency School Safety Demonstration Act of 1985

35145 Open board meetings

35146 Closed sessions (regarding suspensions)

35291 Rules (for government and discipline of schools)

35291.5 Rules and procedures on school discipline

48645.5 Readmission; contact with juvenile justice system

48660-48666 Community day schools

48853.5 Foster youth

48900-48927 Suspension and expulsion

48950 Speech and other communication

48980 Parental notifications

49073-49079 Privacy of student records

52060-52077 Local control and accountability plan

CIVIL CODE

47 Privileged communication

48.8 Defamation liability

CODE OF CIVIL PROCEDURE

1985-1997 Subpoenas; means of production

GOVERNMENT CODE

11455.20 Contempt

54950-54963 Ralph M. Brown Act

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

31 Principal of a crime, defined

240 Assault defined

241.2 Assault fines

242 Battery defined

243.2 Battery on school property

243.4 Sexual battery

245 Assault with deadly weapon

245.6 Hazing

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
 417.27 Laser pointers
 422.55 Hate crime defined
 422.6 Interference with exercise of civil rights
 422.7 Aggravating factors for punishment
 422.75 Enhanced penalties for hate crimes
 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
 WELFARE AND INSTITUTIONS CODE
 729.6 Counseling
 UNITED STATES CODE, TITLE 18
 921 Definitions, firearm
 UNITED STATES CODE, TITLE 20
 1415(K) Placement in alternative educational setting
 7151 Gun-free schools
 UNITED STATES CODE, TITLE 42
 11432-11435 Education of homeless children and youths
 COURT DECISIONS
 T.H. v. San Diego Unified School District (2004) 122 Cal. App. 4th 1267
 Woodbury v. Dempsey (2003) 108 Cal. App. 4th 421
 Board of Education of Sacramento City Unified School District v. Sacramento County Board of Education and Kenneth H. (2001) 85 Cal.App.4th 1321
 Garcia v. Los Angeles Board of Education (1991) 123 Cal. App. 3d 807
 Fremont Union High School District v. Santa Clara County Board (1991) 235 Cal. App. 3d 1182
 John A. v. San Bernardino School District (1982) 33 Cal. 3d 301
 ATTORNEY GENERAL OPINIONS
 84 Ops.Cal.Atty.Gen. 146 (2001)
 80 Ops.Cal.Atty.Gen. 348 (1997)
 80 Ops.Cal.Atty.Gen. 91 (1997)
 80 Ops.Cal.Atty.Gen. 85 (1997)

 Management Resources:
 CSBA PUBLICATIONS
 Safe Schools: Strategies for Governing Boards to Ensure Student Success, 2011
 U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS PUBLICATIONS
 Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline, January 2014
 WEB SITES

CSBA: <http://www.csba.org>
California Attorney General's Office: <http://www.oag.ca.gov>
California Department of Education: <http://www.cde.ca.gov>
U.S. Department of Education, Office for Civil Rights:
<http://www.ed.gov/about/offices/list/ocr/docs/crdc-2012-data-summary.pdf>
U.S. Department of Education, Office of Safe and Drug-Free Schools:
<http://www.ed.gov/about/offices/list/osdfs>

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