

DECODING SCHOOL DISCIPLINE

a tool for understanding school discipline for
foster and probation youth

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DISCIPLINARY TIMELINE

BEFORE SUSPENSION

MEETING REQUIRED: There must be a meeting between the student and the principal or staff. They must tell the student s/he is being suspended and must share with the student the evidence they have that the student violated school rules. The student has the right to share his/her side of the story and provide any supporting information. EC § 48911(b)

UNLESS EMERGENCY SITUATION: There must be a meeting unless there is an “emergency situation.” An “emergency situation” occurs when there is a clear and present danger to the life, safety, or health of students or staff. If there is an emergency situation, the student and his/her parent or other court appointed Education Rights Holder (ERH) must be notified of their right to a conference after the student is sent home. This conference must be held within 2 school days unless the student declines or is physically unable to attend. EC§48911(c)

SUSPENSION

CONTACT WITH PARENT/ERH: The School must make an effort to contact the ERH by phone or in person. The ERH must also receive notification in writing. EC § 48911(d)

5 DAY MAX: A Student cannot be suspended for more than 5 consecutive school days at a time unless there is an extension of suspension meeting. EC § 48911(a)

EXTENSION OF SUSPENSION

MEETING REQUIRED: If the school wants to keep the student out of school beyond the 5 day limit, they must hold an “extension of suspension” meeting with the student and his/her ERH. If you are a probation of foster youth, your school must invite your attorney to attend this meeting. EC § 48853.5(c)/ EC § 48911(g)

GO TO EXPULSION? At this meeting, the school will decide whether the student’s presence at school would cause a danger to persons or property or a threat of disruption to the instructional process. If they decide that the student is a danger or threat, they will move forward with the expulsion process.

EXPULSION HEARING

HEARING: The expulsion hearing is where the school district will present its evidence in favor of expelling the student. The district is always required to prove that the student committed the alleged violation. For some violations, the district must also prove one or both of two “secondary findings” in order to expel the student. The hearing must occur within 30 school days of the alleged violation unless the student requests an extension. EC § 48918(a)(1)

RIGHT TO PRESENT EVIDENCE: This is the hearing where the student may present evidence, witnesses, or arguments against the district’s recommendation to expel. The student also has a right to be represented by an attorney or advocate. EC § 48918(b)(5)

AFTER EXPULSION

TERMS OF EXPULSION: Expulsions can last from 6 to 12 months and students are required to complete a rehabilitation plan prior to re-admittance into the school from which they were expelled.

ATTENDANCE DURING EXPULSION: If a student is expelled from the school district they cannot attend any regular school in that district and may be prevented from attending a regular school in another district if they are deemed a continuing risk of danger.

DISCIPLINE FOR STUDENTS RECEIVING SPECIAL EDUCATION

Except in special circumstances, whenever proposed school disciplinary measures will result in a change of placement for a student with an IEP, the school must conduct a manifestation determination. This is to determine if the student's behavior was the result of his/her disability and whether the school district was providing the student with appropriate special education services. EC § 48915.5

- A change of placement occurs if the removal exceeds 10 consecutive school days or is part of a pattern of removals for substantially similar behavior.
- A student's behavior is a manifestation of his/her disability if either:
 1. it was caused by or had a direct and substantial relationship to the student's disability, or
 2. it was the direct result of the school's failure to implement the student's IEP.
- If the conduct is a manifestation of the student's disability, the school must return the student to class and make sure s/he has an appropriate behavioral intervention plan going forward. If it is not a manifestation, the student can be disciplined in the same way students without an IEP would be disciplined.
- If the student is a foster or probation youth his/her attorney must be invited to the manifestation determination meeting.

Manifestation determination hearings must also be conducted when a student with a 504 plan is removed from school for more than 10 school days. In these circumstances, it is also a good idea to consider a referral for an IEP assessment.

WARNING! "STIPULATED EXPULSIONS"

After the suspension is extended, a person from the school district may offer a "stipulated expulsion" as a way to expedite the process. They may describe this as a way to get the student back in a school as soon as possible.

It is important to understand that if the student stipulates to the expulsion, s/he gives up the right to an expulsion hearing and the right to appeal the expulsion. Having the expulsion hearing could prevent the expulsion from occurring. While there may be situations in which a stipulated expulsion is appropriate, a student should NOT STIPULATE TO AN EXPULSION WITHOUT TALKING TO THEIR ATTORNEY.

The idea of having an expulsion hearing can be overwhelming. If the student is a probation or foster youth, s/he has an attorney who may be able to help with the expulsion hearing or refer the student to someone who can.

TIPS FOR STUDENTS!

- When you are in trouble, take advantage of the interventions and classes that are offered to help you.
- You do not have to talk to school staff about the incident without a parent present. You also do not have to admit to anything.
- As a probation or foster youth you have an attorney who can help you! Call them when you get suspended, or think your school might try to expel you. Also, your school is supposed to notify your attorney, but often does not!
- IEP? If you have an IEP or a 504 plan, you and your parent or ERH may be called in to have a manifestation determination meeting following your suspension. If you are a foster or probation youth your attorney must be invited to this meeting.
- Unless you are expelled, you do not have to agree to change schools upon a district's suggestion. Participation in independent studies or alternative schools is entirely voluntary.
- Do not stipulate to an expulsion without talking to your attorney first!

DISCLAIMER:

This publication is not for the purpose of providing legal advice. The information cited is from published laws and regulations, program policies and guidelines, etc., which are subject to change. We recommend that you consult a lawyer if you want legal advice with respect to any particular issue or problem.

Includes behavior : • while on school grounds; • going to or coming from school; • during lunch hour whether on or off campus; & • during or on the way to/from school sponsored event (EC § 48900(s))	• Only after informal conference or in emergency situation • Only if other means of correction have failed • For no more than 5 consecutive school days (EC §§ 48900.5, 48911)	If the principal recommends expulsion, one or both of the following secondary findings are necessary to expel: • Other means of correction not feasible or have repeatedly failed • Student's presence on campus poses continuing danger (EC § 48915(e))	• Principal generally must recommend expulsion (EC § 48915(a)) • Expulsion requires one or both of secondary findings (EC § 48915(b))	• Principal must immediately suspend student and seek expulsion (EC § 48915(c)) • Governing board must order expulsion and refer student to alternate program of study (EC § 48915(d))
"SCHOOL RELATED" BEHAVIOR	SUSPENSION	DISCRETIONARY EXPULSION HEARING	MANDATORY EXPULSION HEARING	MANDATORY EXPULSION
INJURY & THREATS • cause, attempted to cause, threatened to cause physical injury • willful use of force on person except in self defense EC § 48900(a)	✓		✓ • causing serious physical injury except in self defense • assault or battery of any school employee	
AIDING & ABETTING PHYSICAL INJURY EC § 48900(t)	✓		✓ • ONLY if found by court to have committed, as an aider and abettor, a crime causing serious bodily injury	
SEXUAL ASSAULT OR BATTERY • includes attempted assault EC § 48900(n)	✓			✓ • committing or attempting to commit sexual assault • commission of sexual battery
SEXUAL HARASSMENT • unwelcome sexual advances, including verbal, visual or physical conduct, severe enough to have negative impact on academic performance or create intimidating, hostile or offensive environment. EC (sec) 48900.2	✓ ONLY applicable grades 4-12	✓ ONLY applicable grades 4-12		
FIREARMS & DANGEROUS OBJECTS • possession, sale or furnishing of a firearm, knife, explosive or other dangerous object EC § 48900(b)	✓		✓ • possession of any knife or other dangerous object of no reasonable use to student	✓ • unsanctioned possession of firearm confirmed by school employee EC §48915(c)(1) • brandishing a knife EC §48915(c)(2) • possession of an explosive EC §48915(c)(5)
IMITATION FIREARMS • possession of replica that would deceive a reasonable person EC § 48900(m)	✓	✓		
DRUGS & ALCOHOL • possession, sale, furnishing, use and being under the influence EC § 48900 (c), (p)	✓		✓ • EXCEPT for first offense for possession of not more than 1 ounce of non concentrated cannabis	✓ • unlawful sale of controlled substance EC §48915(c)(3)
IMITATION DRUGS & ALCOHOL • offer/negotiation and sale/delivery of product represented as drug/alcohol/intoxicant EC § 48900(d)	✓		✓	
TOBACCO & NICOTINE PRODUCTS • possession or use absent a prescription EC § 48900(h)	✓	✓		
DRUG PARAPHERNALIA • unlawful possession or offer/arrangement to sell EC § 48900(j)	✓	✓		
ROBBERY & EXTORTION • includes attempt to commit EC § 48900(e)	✓		✓	
THEFT & RECEIPT OF STOLEN PROPERTY • includes attempt to steal and knowingly receiving stolen property EC § 48900(g), (l)	✓	✓		
PROPERTY DAMAGE • includes attempt to cause damage EC § 48900(f)	✓	✓		
CREATING HOSTILE EDUCATIONAL ENVIRONMENT • harassment, threats or intimidation against students or staff severe/pervasive enough to have actual and reasonably expected effect of materially disrupting classwork, creating substantial disorder, and invading student/staff rights by creating hostile/intimidating environment EC § 48900.4	✓	✓		
OBSCENITY & PROFANITY • obscene act or habitual profanity/vulgarity EC § 48900(i)	✓	✓		
WILLFUL DEFIANCE • includes disruption of school activities and defiance of supervisors, teachers, administrators, officials and other school personnel in performance of their duties EC § 48900(k)	✓ ONLY applicable grades 4-12			
HAZING • method of initiation into pupil organization, whether or not organization is sanctioned, that is likely to cause serious bodily injury or degradation resulting in physical/mental harm EC § 48900(q)	✓			
BULLYING • includes physical, verbal, written and electronic acts originating on or off school campus EC § 48900(r)	✓			
HATE VIOLENCE EC § 48900.3	✓ ONLY applicable grades 4-12	✓ ONLY applicable grades 4-12		
WITNESS HARASSMENT OR RETALIATION • harassment, threats or intimidation of witness in school disciplinary proceeding for purpose of prevention of testimony or retaliation EC § 48900(o)	✓			
TERRORISTIC THREATS • written or oral statements willfully threatening to commit a crime resulting in death, great bodily injury or property damage in excess of \$1,000, with specific intent that statement be taken as a threat whether or not there is intent to carry out the threat . EC (sec) 48900.7	✓			

"OTHER MEANS OF CORRECTION"

In most cases, formal school discipline can only occur after "other means of correction" have been tried and failed. "Other means of correction" include but are not limited to:

- Parent teacher conferences
- Utilization of a positive behavior support program
- Referrals to school counselor, other school support services or student support teams
- Assessment for special education
- Referrals to a restorative justice programs
- Referrals to pro social behavioral programs or anger management
- Participation in community service