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LEGAL UPDATE

May 17, 2004

To: Superintendents, Member School Districts (K-12)

**From: Margaret M. Merchat, Associate General Counsel
Susanne K. Reed, Associate General Counsel**

**Subject: 2004 Student Discipline Policy
Memo No. 6-2004**

Attached to this memorandum is the updated student suspension/expulsion policy. The updated policy is much the same as the previous policy with changes in the following areas.

1. Under Education Code § 48900(p), unlawfully offering, arranging to sell, negotiating to sell, or selling the prescription drug Soma is an added grounds for suspension or expulsion.
2. Under Education Code § 54890(q), "hazing" is added as a new ground for disciplinary action. Hazing is defined in Education Code § 32050 as follows:

"As used in this article, "hazing" includes any method of initiation or preinitiation into a student organization or student body or any pastime or amusement engaged in with respect to these organizations which causes, or is likely to cause, bodily danger, physical harm, or personal degradation or disgrace resulting in physical or mental harm, to any pupil or other person attending any school, community college, college, university, or other educational institution in this state. The term "hazing" does not include customary athletic events or other similar contests or competitions."

Please note that since the Legislature did not amend Education Code § 48915, there is some doubt whether a student may be expelled based solely on hazing. Until this omission is corrected, any act of hazing should be evaluated to determine whether it also constitutes one or

more of the other bases for discipline set forth in Education Code § 48900 (e.g., disruption, use of force or violence, and/or physical injury).

3. Under Education Code § 48900(t), for purposes of suspension and expulsion, “school property” includes, but is not limited to, electronic files and databases.
4. Under Education Code § 48900.4, additional grounds for suspension or expulsion include harassment, threats, or intimidation of pupils or school district personnel.
5. Education Code § 48901.5 relating to electronic signaling devices has been amended to replace the previous language that “[N]o school district shall permit [electronic signaling devices]” with “[T]he governing board of each school district or its designee may regulate [electronic signaling devices].” We have therefore revised the attached policy in order to omit “possessed or used any electronic signaling device...” as a ground for suspension (former section I.C.r.) and included the language defining electronic signaling devices and allowing regulation of such devices under definitions. We would recommend that your individual school policies include regulations relating to electronic signaling devices.
6. Education Code § 48916 has been amended to clarify that, if an expulsion is ordered during summer session or the intersession period of a year-round program, the governing board is to set a date, not later than the last day of the semester following the summer session or intersession period in which the expulsion occurred, when the pupil shall be reviewed for readmission.
7. When a principal reports a criminal act committed by a student with exceptional needs, as defined under Education Code § 56026, the principal must also ensure copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom the principal reported the criminal act.
8. Provisions specific to California law regarding discipline for students with exceptional needs have been deleted. In their place, Education Code § 48915.5 references §§ 300.519-300.529 of the Code of Federal Regulations as the source of provisions that must be complied with in regards to discipline for students with exceptional needs. These changes have been incorporated in the revised Student Discipline Policy, attached. In addition, the requirements of §§ 300.519-300.529 of the Code of Federal Regulations are discussed fully in Memo 7-2004.

Please call if you have any questions.

STUDENT SUSPENSION/EXPULSION POLICY

I. SUSPENSION FROM SCHOOL

A. Suspension: Definitions (Education Code Section 48925)

1. Suspension from school means removal of a pupil from ongoing instruction for adjustment purposes.
2. Day means a calendar day unless otherwise specifically provided.
3. Schoolday means a day upon which the schools of the district are in session or weekdays during the summer recess.
4. Pupil includes a pupil's parent or guardian or legal counsel.
5. Pupil with Previously Identified Exceptional Needs means a pupil who meets the requirements of Education Code Section 56026 and who, at the time the alleged misconduct occurred, was enrolled in a special education program.
6. Principal's Designee means one or more administrators at a school site specifically designated by the principal, in writing, to assist with disciplinary procedures.

In the event there is not an administrator beside the principal at a school site, the principal may specifically designate, in writing, a certificated employee at the school site to assist with disciplinary procedures. Only one such certificated employee at a time may be designated as the principal's primary designee for the school year.

An additional certificated person may be designated by the principal, in writing, to assist with disciplinary procedures when both the principal and principal's primary designee are absent from the school site. The name of the additional person and the person(s) designated as "principal's designee", shall be on file in the principal's office. (Education Code Section 48911(h))

7. Habitual means a frequent repetition.
8. Terroristic Threat shall include any statement, whether written or oral, 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 one thousand dollars (\$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. (Education Code Section 48900.7(b))

9. Hazing includes any method of initiation or preinitiation into a student organization or student body or any pastime or amusement engaged in with respect to these organizations which causes, or is likely to cause, bodily danger, physical harm, or personal degradation or disgrace resulting in physical or mental harm, to any pupil or other person attending any school, community college, college, university, or other educational institution in this state. The term “hazing” does not include customary athletic events or other similar contests or competitions.
10. Electronic Signaling Device includes any electronic signaling device that operates through the transmission or receipt of radio waves, including, but not limited to, paging and signaling equipment. The governing board or its designee may regulate the possession or use of such devices by pupils of the school district while on campus, while attending any school-sponsored activity, or while under the supervision and control of any district employee; however, no pupil shall be prohibited from possessing or using an electronic signaling device that is determined by a licensed physician and surgeon to be essential to the health of the pupil and the use of which is limited to purposes related to the health of the pupil. (Education Code Section 48901.5)
11. School Property includes, but is not limited to, electronic files and databases.

B. Suspension: Authority to Suspend

Suspension shall be imposed only when other means of correction fail to bring about proper conduct. However, a pupil, including a pupil with previously identified exceptional needs, may be suspended for any of the reasons in Education Code Section 48900 upon a first offense, if the principal or superintendent determines the pupil has committed any of the acts enumerated in Education Code Section 48900 (a)-(e) (see paragraph I.C.2 (a)-(e)) or that the pupil's presence causes a danger to persons or property or threatens to disrupt the instructional process. (Education Code Section 48900.5)

C. Suspension: Grounds for Suspension or Expulsion (Education Code Sections 48900, 48900.2, 48900.3, 48900.4, 48900.7)

1. A pupil may be suspended for any of the acts listed in Education Code Section 48900, Education Code Section 48900.2, 48900.3, 48900.4, or 48900.7 (see paragraph I.C.2) if the act is related to school activity or school attendance occurring within a school under the jurisdiction of the superintendent or the principal or occurring within any other school district(s), including but not limited to the following circumstances:
 - a. While on school grounds.
 - b. While going to or coming from school.
 - c. During the lunch period, whether on or off the school campus.

- d. During, or going to or coming from, a school-sponsored/school-related activity.
2. A pupil may not be suspended or recommended for expulsion unless the superintendent or the principal of the school in which the student is enrolled determines that the pupil has:
- a. (1) Caused, attempted to cause, or threatened to cause physical injury to another person

(2) Willfully used force or violence upon the person of another, except in self-defense.
 - 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 pupil had obtained written permission from a certificated school employee, which is concurred in by the principal or the principal's designee.
 - c. Unlawfully possessed, used, sold, or otherwise furnished, or been under the influence of, any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind.
 - d. Unlawfully offered or arranged or negotiated to sell any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind, and then either sold, delivered, or otherwise furnished to any person another liquid, substance, or material and represented the liquid, substance, or material as a controlled substance, alcoholic beverage, or intoxicant.
 - e. Committed or attempted to commit robbery or extortion.
 - f. Caused or attempted to cause damage to school property or private property. "School property" includes, but is not limited to, electronic files and data bases.
 - g. Stolen or attempted to steal school property or private property. "School property" includes, but is not limited to, electronic files and data bases.
 - h. Possessed or used tobacco, or any products containing tobacco or nicotine products, including, but not limited to, cigarettes, cigars, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets, and betel. However, this does not prohibit use or possession by a pupil of his or her own prescription products.
 - i. Committed an obscene act or engaged in habitual profanity or vulgarity.

- j. Unlawfully possessed or unlawfully offered, arranged, or negotiated to sell any drug paraphernalia, as defined in Section 11014.5 of the Health and Safety Code.
- k. Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties.
- l. Knowingly received stolen school property or private property. "School property" includes, but is not limited to, electronic files and data bases.
- m. Possessed an imitation firearm. As used in this section, "imitation firearm" means 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.
- n. Committed or attempted to commit a sexual assault as defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal Code or committed a sexual battery as defined in Section 243.4 of the Penal Code.
- o. Harassed, threatened, or intimidated a pupil who is a complaining witness or witness in a school disciplinary proceeding for the purpose of either preventing that pupil from being a witness or retaliating against that pupil for being a witness, or both.
- p. Unlawfully offered, arranged to sell, or sold the prescription drug Soma.
- q. Engaged in, or attempted to engage in, hazing, as defined in Education Code § 32050. (Education Code § 48900(q))
- r. Aids or abets, as defined in Section 31 of the Penal Code, the infliction or attempted infliction of physical injury to another person may suffer suspension, but not expulsion, pursuant to the provisions of this section, except that a pupil who has been adjudged by a juvenile court to have committed, as an aider and abettor, a crime of physical violence in which the victim suffered great bodily injury or serious bodily injury shall be subject to discipline pursuant to subdivision (a), above.
- s. Committed sexual harassment as defined in Education Code Section 212.5. This conduct must be considered by a reasonable person of the same gender as the victim to be sufficiently severe or pervasive to have a negative impact upon the individual's academic performance or to create an intimidating, hostile, or offensive educational environment. This sub-section shall not apply to pupils enrolled in kindergarten and grades 1 to 3, inclusive. (Education Code Section 48900.2)
- t. Caused, attempted to cause, threatened to cause, or participated in an act of hate violence as defined in subdivision (e) of Education Code Section 233.

This sub-section applies to pupils enrolled in any of grades 4 to 12, inclusive. (Education Code Section 48900.3)

- u. Intentionally engaged in harassment, threats, or intimidation, directed against school district personnel or pupils 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 either school personnel or pupils by creating an intimidating or hostile education environment. This sub-section applies to pupils enrolled in any of grades 4 to 12, inclusive. (Education Code Section 48900.4)
- v. Making terroristic threats, as defined, against school officials or school property, or both. (Education Code 48900.7)

D. Alternatives to Suspension/Additional Disciplinary Actions

1. Alternatives to suspension or expulsion will be used against students who are truants, tardy, or otherwise absent from assigned school activities.
2. A superintendent or principal may use their 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.
3. As part of or instead of disciplinary action prescribed by this policy, the principal of a school, the principal's designee, a pupil may be required to perform community service on school grounds or, with written permission of the parent or guardian of the pupil, off school grounds, during the pupil's nonschool hours. For purposes of this sub-section "community service" may include, but is not limited to, work performed in the community or on school grounds in the areas of outdoor beautification, community or campus betterment, and teacher, peer or youth assistance programs. This sub-section does not apply if a pupil has been suspended, pending expulsion, pursuant to Section 48915. However, this section applies if the recommended expulsion is not implemented or is, itself, suspended by stipulation or other administrative action.

E. Suspension: Procedures

1. Suspension by Teacher (Education Code Section 48910)
 - a. A teacher may suspend any pupil from his/her class, for any of the acts enumerated in Education Code Section 48900 (see paragraph I.C.2) for the day of the suspension and the day following.
 - b. The teacher shall immediately report the suspension to the principal of the school and send the pupil to the principal or designee for appropriate action.
 - c. As soon as possible, the teacher shall telephone or write to the parent or guardian of the pupil asking them to attend a parent/teacher conference regarding the suspension. Whenever practicable, a school counselor or a

school psychologist shall attend the conference. A school administrator shall attend the conference if the teacher or the parent or guardian so requests.

- d. The pupil shall not be returned to the class from which he/she was suspended, during the period of the suspension, without the concurrence of the teacher and the principal.
- e. A pupil suspended from a class shall not be placed in another regular class during the period of suspension. However, if the pupil is assigned to more than one class per day, this paragraph shall apply only to other regular classes scheduled at the same time as the class from which the pupil was suspended.
- f. A teacher may also refer a pupil, for any of the acts enumerated in Education Code Sections 48900, 48900.2, 48900.3, 48900.4, and 48900.7 (see paragraph I.C.2), to the principal for consideration of a suspension from the school.
- g. A teacher may require the parent or guardian of a pupil suspended by the teacher for violating sub-section (i) or (k) of Education Code Section 48900 (see paragraph I.C.2.i. and k.) to attend a portion of a schoolday in his or her child's or ward's classroom in accordance with **Board Policy No. _____**. (Education Code Section 48900.1)

2. Suspension by Superintendent, Principal or Principal's Designee
(Education Code Section 48911)

- a. The principal of the school, the principal's designee, or the superintendent may suspend a pupil from the school for any of the acts enumerated in Education Code Sections 48900, 48900.2, 48900.3, 48900.4, and 48900.7 and (see paragraph I.C.2), and pursuant to Education Code Section 48900.5 (see paragraph I.B.), for not more than five consecutive school days.
- b. Pre-suspension Conference
Suspension shall be preceded by an informal conference conducted by the principal or his designee or the superintendent between the pupil, and whenever practicable, the teacher or supervisor or school employee who referred the pupil to the principal or his designee or the superintendent. At the conference, the pupil shall be informed of the reason for the disciplinary action and the evidence against him/her and shall be given the opportunity to present his/her version and evidence in support of his/her defense.
(Education Code Section 48911(b))

Exception: Emergency Situation

This pre-suspension conference may be omitted only if the principal or principal's designee or superintendent determines that an emergency situation exists. "Emergency situation" means a situation determined by the principal, the principal's designee, or the superintendent to constitute a clear and present danger to the lives, safety or health of pupils or school personnel.

If the pre-suspension conference is not held, both the parent/guardian and pupil shall be notified of the pupil's right to return to school for the purpose of a conference. The conference shall be held within two school days, unless the pupil waives his/her right to it, or is physically unable to attend for any reason; in such case the conference shall then be held as soon as the pupil is physically able to return to school. (Education Code Section 48911(c))

c. Notice to Parents

- (1) At the time of the suspension, a school employee shall make a reasonable effort to contact the parent/guardian in person or by telephone.
- (2) A notice of the suspension shall be mailed to the parent/guardian of the suspended pupil. The notice shall be in the primary language of the parent/guardian insofar as practicable and to the extent required by law. (Education Code Section 48985) The notice shall include the following:
 - (a) A statement of the facts leading to the decision to suspend.
 - (b) The date and time when the pupil will be allowed to return to school.
 - (c) A statement of the right of the pupil or parent/guardian to request a meeting with the superintendent or superintendent's designee pursuant to policy Section I(D)(3)(e).
 - (d) A statement of the parent/guardian's or the pupil's right to have access to the pupil's record as provided by Education Code Section 49069.
 - (e) A request that the parent/guardian attend the informal conference with school officials regarding the pupil's behavior, including notice that state law requires parent/guardian to respond to such request without delay.
- (3) While the parent/guardian is required to respond without delay to a request for a conference regarding his/her child's behavior, no penalties may be imposed on the pupil for the failure of the parent/guardian to attend such conference, nor may the readmission of the pupil be contingent on the attendance by the pupil's parent/guardian at such conference. (Education Code Section 48911(f))
- (4) A school employee shall report the suspension of the pupil, including the cause therefor, to the district superintendent. (Education Code Section 48911(e))
- (5) Notice to Parents Upon Release of Minor Pupil to Peace Officer

When a principal or other school official releases a pupil to a peace officer in order to remove the minor from the school premises, with

the exception of cases involving suspected child abuse, the school official shall take immediate steps to notify the parent/guardian or responsible relative of the pupil that the pupil has been released to the officer, and the place to which the pupil is reportedly being taken. In cases involving suspected child abuse, the school official shall provide the peace officer with the address and telephone number of the pupil's parent or guardian. (Education Code Section 48906)

d. Notice to Law Enforcement Authorities

The principal of a school or the principal's designee shall, prior to the suspension or expulsion of any pupil, notify the appropriate law enforcement authorities of the county or city in which the school is situated, of any acts of the pupil that may violate Section 245 of the Penal Code, relating to assault with a deadly weapon or force likely to produce great bodily harm. (Education Code Section 48902(a))

The principal of a school or the principal's designee shall within one schoolday of the suspension or expulsion of any pupil by telephone or other appropriate method chosen by the school, notify the appropriate law enforcement authorities of the county or city in which the school is situated, of any acts of the pupils that may violate subdivision (c) or (d) of Education Code Section 48900 (see paragraphs I.C.2.c. and d. and II.C.3.c. and d.) (Education Code Section 48902(b))

The principal or the principal's designee shall notify the appropriate law enforcement authorities of the county or city in which the school is located of any acts of the student which may involve the possession or sale of a controlled substance or a violation of Section 626.9 or 626.10 of the Penal Code relating to bringing or possessing on school grounds a firearm, a knife having a fixed blade longer than 2-1/2 inches, folding knife with a blade that locks into place, a razor with an unguarded blade, a taser, a stun gun or any instrument that expels a metallic projectile such as a BB or pellet, through the force of air pressure, CO₂ pressure, or spring action, or any spot marker gun. (Education Code Section 48902(c))

The principal or the principal's designee reporting a criminal act committed by a schoolage individual with exceptional needs, as defined in Education Code Section 56026 shall ensure that copies of the special education and disciplinary records of the pupil are transmitted, as described in paragraph (9) of subsection (k) of Section 1415 of Title 20 of the United States Code, for consideration by the appropriate authorities to whom the principal reported the criminal act. Any copies of the pupil's special education and disciplinary records may be transmitted only to the extent permissible under the federal Family Education Rights and Privacy Act (20 U.S.C. Sec. 1232g *et seq.*) (Education Code Section 48902(f))

e. Meeting with Superintendent or Superintendent's Designee
(Education Code Section 48914)

If suspension is ordered by a principal or a principal's designee, the pupil or the pupil's parent/guardian shall have the right to request a meeting with the superintendent or superintendent's designee to discuss the causes, the duration, the policy involved and other matters pertinent to the suspension.

If, after the meeting, the superintendent or superintendent's designee determines that no violation occurred, all records and documentation regarding disciplinary proceedings and suspension shall be destroyed immediately, and no information regarding the meeting shall be placed in the pupil's permanent record file or communicated to any person not directly involved in the disciplinary proceedings. If the determination is that the penalty imposed was inappropriate for the violation, the records and documentation concerning the suspension shall be revised to indicate only the facts leading to any other disciplinary action imposed by the superintendent or the superintendent's designee. (Education Code Section 48914)

3. Suspension by Governing Board (Education Code Section 48912)

a. The governing board may suspend a pupil from school for any of the acts listed under Education Code Sections 48900, 48900.2, 48900.3, 48900.4 and 48900.7 (see paragraph I.C.2) for any number of school days not to exceed twenty school days in any school year, unless for purposes of adjustment a pupil enrolls in or is transferred to another regular school, an opportunity school or class, or continuation education school or class, in which case suspension shall not exceed thirty school days in any school year. (Education Code Section 48912(a))

b. Hearing By Governing Board/Closed Session

(1) If the governing board is considering a suspension, disciplinary action, or any other action, except expulsion, against any pupil, it shall hold closed sessions if a public hearing would lead to disclosure of information which would violate a pupil's right to privacy under Education Code Section 49073 *et. seq.* The pupil may request, however, a public meeting and the request shall be granted if made in writing and served upon the clerk or secretary of the governing board within 48 hours after receipt of the board's notice of closed session, except any discussion at the meeting that may be in conflict with any other pupil's right to privacy, shall be in closed session. (Education Code Section 48912(b)-(c))

(2) Board Notice of Closed Session

Before calling a closed session to consider suspension of, disciplinary action against, or any other action against a pupil except expulsion, the governing board shall, in writing, by registered or certified mail or by personal service, notify the pupil and the pupil's

parent or guardian of the intent of the governing board to call and hold a closed session. (Education Code Section 48912(c))

F. Suspension: Limitations on Suspensions

1. The superintendent, principal or principal's designee may suspend a pupil for no more than five consecutive school days for any of the reasons enumerated above under grounds for suspension. (Education Code Section 48911(a)) A pupil shall be suspended for no more than twenty school days in a school year, unless for purpose of adjustment a pupil is enrolled or transferred to another regular school, an opportunity school or class, or a continuation education school or class, in which case suspension shall not exceed thirty school days of suspension in one school year.
2. The governing board may suspend a pupil for any number of consecutive school days not to exceed twenty school days in a school year, unless for purposes of adjustment a pupil enrolls in or is transferred to another regular school, an opportunity school or class, or continuation education school or class, in which case suspension by the governing board shall not exceed thirty consecutive school days in any school year. (Education Code Section 48912(a))
3. Suspensions that occur while a pupil is enrolled in another school district **[are/are not]** counted in calculating the maximum number of days of suspension. (Education Code Sections 48903 and 48912(a))
4. Notwithstanding paragraphs I.F.1. and 2. above, if an expulsion of the suspended student is being processed by the governing board, the suspension may be extended by the superintendent, or a person designated by the superintendent, in writing, until such time as the governing board has rendered a decision. (Education Code Section(48911(g))

Before acting to extend the suspension, the superintendent or superintendent's designee shall notify the pupil and the pupil's parent/guardian of the proposed extension with an offer to hold a conference concerning the extension to give the pupil and the pupil's parent/guardian an opportunity to be heard on the extension. Following the meeting in which the pupil and the pupil's parent/guardian are invited to participate, the superintendent may extend the suspension only upon first determining that the presence of the pupil at the school or in an alternative school placement would cause a danger to persons or property or a threat of disrupting the instructional process.

If the pupil or the pupil's parent/guardian requested a meeting to challenge the original suspension by a principal or principal's designee pursuant to paragraph I.E.2.e., that meeting may be held to decide both the merits of the suspension and the extension of the suspension order under this paragraph I.F.3. (Education Code Section 48911(g))

5. Suspensions of Pupils with Previously Identified Exceptional Needs.

a. Maximum Consecutive Days.

To the extent suspension of the pupil would be applied to a pupil who does not have exceptional needs, a pupil with previously identified exceptional needs may be suspended for up to five consecutive school days by the superintendent, principal or principal's designee or up to 10 consecutive school days by the governing board. (Ed. Code sec. 48915.5; 34 C.F.R. 300.520.) Pupils with exceptional needs may be subject to additional days of suspension if the additional days of suspension do not constitute a "change in placement."

b. Suspensions that would result in a "change in placement."

(1) Definition. A "change in placement" occurs (a) when a suspension is more than 10 consecutive days or (b) when a series of suspensions constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as the length of each suspension, the total amount of time of suspension, and the proximity of the suspensions to one another. (Ed. Code sec. 48915.5; 34 C.F.R. 300.519)

(2) Notice of Procedural Safeguards. Not later than the day on which a decision is made to proceed with the suspension process, the parent of the pupil shall be notified of the decision to consider suspension and procedural safeguards if the suspension would result in a change in placement. (34 C.F.R. 300.523(a))

(3) IEP Meeting. Prior to a suspension that would result in a "change in placement," an IEP team meeting shall be convened (a) to initiate a functional behavioral assessment of the pupil or to review and modify an existing functional behavioral intervention plan and (b) to conduct a manifestation determination review of the relationship between the pupil's disability and the behavior subject to disciplinary action.

(4) Manifestation Determination.

(a) The IEP team plus other qualified personnel must consider all relevant information, including evaluation and diagnostic results, relevant information supplied by the pupil's parents, observations of the pupil and the pupil's IEP and placement, and

(b) Determine that in relationship to the behavior: (i) the pupil's IEP and placement were appropriate, (ii) the special education services, supplementary aids and services and behavior interventions strategies provided were consistent with the IEP and placement, (iii) the pupil's disability did not impair the ability of the pupil to understand the impact

and consequences of the behavior , and (iv) the pupil's disability did not impair the ability of the pupil to control the behavior. (34 C.F.R. 300.523.)

- (c) If any of the standards in paragraph (b), above, have not been met, the behavior must be deemed a manifestation of the pupil's disability, and no suspension may be ordered. (34 C.F.R. 300.523(d))
- (d) If the behavior is determined not to be a manifestation of the pupil's disability, the pupil may be suspended pursuant to the disciplinary procedures applicable to pupils without disabilities. The special education records and disciplinary records of the pupil shall be transmitted for consideration by the person(s) making the final determination regarding the suspension. (34 C.F.R. 300.524(a) and (b).)

- c. Services after Tenth Day of Suspension. After the tenth day of suspension, the pupil shall be provided services to the extent necessary to enable the pupil to appropriately progress in the general curriculum and appropriately advance toward achieving his/her IEP goals. (Ed. Code sec. 48915.5; 34 C.F.R. 300.121(d) and 300. 520(a)(1)(ii).)

G. Suspension: Supervised Suspension Classroom

1. A pupil suspended from a school for any of the reasons enumerated in Paragraph I.C. of this Policy may be assigned, by the principal or the principal's designee, to a supervised suspension classroom for the entire period of suspension if the pupil poses no imminent danger or threat to the campus, pupils or staff, or if an action to expel the pupil has not been initiated.
2. Pupils assigned to a supervised classroom shall be separated from other pupils at the schoolsite for the period of suspension in a separate classroom, building, or site for pupils under suspension.
3. Each pupil in the supervised suspension classroom is responsible for contacting his or her teacher or teachers to receive assignments to be completed while the pupil is assigned to the classroom. The teacher shall provide all assignments and tests that the pupil will miss while suspended. If no classroom work is assigned, the person supervising the suspension classroom shall assign schoolwork.
4. At the time a pupil is assigned to a supervised suspension classroom, a school employee shall notify, in person or by telephone, the pupil's parent or guardian. Whenever a pupil is assigned to a supervised suspension classroom for longer than one class period, a school employee shall notify the pupil's parent or guardian in writing. (Education Code Section 48911.1)

II. EXPULSION

A. Expulsion: Definitions

Expulsion means removal of a pupil from the immediate supervision and control, or the general supervision, of school personnel, as those terms are used in Education Code Section 46300.

Explosive means a “destructive device” as described in Section 921 of Title 18 of the United States Code, and includes, but is not limited to: (A) any explosive, incendiary, or poison gas (i) bomb, (ii) grenade, (iii) rocket having a propellant charge of more than four ounces, (iv) missile having an explosive or incendiary charge of more than one-quarter ounce, (v) mine, or (vi) similar device; (B) any type of weapon by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and (C) any combination of parts either designed or intended for use in converting any device into any destructive device. (Refer to Title 18, Section 921 for specific exclusions).

Firearm means any device, designed to be used as a weapon, from which is expelled through a barrel a projectile by the force of any explosion or other form of combustion. (Penal Code Section 12001)

Knife means any dirk, dagger, or other weapon with a fixed, sharpened blade fitted primarily for stabbing, a weapon with a blade fitted primarily for stabbing, a weapon with a blade longer than 3 1/2 inches, a folding knife with a blade that locks into place, or a razor with an unguarded blade.

Assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another (Penal Code Section 240).

Battery is any willful and unlawful use of force or violence upon the person of another (Penal Code Section 242).

Terroristic Threat shall include any statement, whether written or oral, 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 one thousand dollars (\$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. (Education Code section 48900.7(b))

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. (Education Code section 48918(b)(5)(A))

Nonattorney 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 pupil or the pupil's parent or guardian to provide assistance at the hearing. (Education Code section 48918(b)(5)(B))

Dangerous Weapon means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length. (18USC 930(g)(2))

Explosive means a “destructive device as described in Section 921 of Title 18 of the United States Code.

B. Expulsion: Authority to Expel

A pupil may be expelled only by the governing board.

C. Expulsion: Grounds for Expulsion

For a pupil to be expelled for any grounds enumerated in this section, the act must have been committed at school or at a school activity off school grounds as defined in section 48900:

1. Except as provided in subsections 3 and 5, the principal or the superintendent of schools shall recommend the expulsion of a pupil for any of the following acts, unless the principal or superintendent finds that expulsion is inappropriate, due to the particular circumstance:
 - a. (1) Caused, attempted to cause, or threatened to cause physical injury to another person; or

(2) Willfully used force or violence upon the person of another, except in self-defense.
 - b. Possession of any knife or other dangerous object of no reasonable use to the pupil at school or at a school activity off school grounds.
 - c. Unlawful possession of any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, except for the first offense for the possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis.
 - d. Robbery or extortion.
 - e. Assault or battery, as defined in Sections 240 and 242 of the Penal Code, upon any school employee.

(Education Code Section 48915(a))

2. Upon recommendation by the principal, superintendent, or hearing officer/administrative panel appointed pursuant to paragraph II.F., the governing board may order a pupil expelled upon finding that the pupil violated Section II.C., above, or committed any of the following acts:
 - a. Caused, attempted to cause, or threatened to cause physical injury to another person. [Education Code Section 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 pupil had obtained written permission to possess the item from a certificated school employee, which is concurred in by the principal or the designee of the principal. [Education Code Section 48900(b)].
 - c. Unlawfully possessed, used, sold or otherwise furnished, or been under the influence of, any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind. [Education Code Section 48900(c)].
 - d. Unlawfully offered, arranged or negotiated to sell any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind, and then either sold, delivered or otherwise furnished to any person another liquid, substance, or material and represented the liquid, substance or material as a controlled substance, alcoholic beverage or intoxicant. [Education Code Section 48900(d)].
 - e. Committed or attempted to commit robbery or extortion. [Education Code Section 48900(e)].

and one or both of the following:

- (1) that other means of correction are not feasible or have repeatedly failed to bring about proper conduct, or
- (2) that due to the nature of the act, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.

(Education Code Sections 48900(a)-(e) and 48915(b))

3. The principal or the superintendent of schools shall immediately suspend pursuant to Education Code Section 48911 and shall recommend to the governing board the expulsion of a pupil that he or she determines has committed any of the following act:
 - a. Possessing, selling, or otherwise furnishing a firearm except with prior written permission to possess the firearm from a certificated employee, concurred in by the principal or the designee of the principal. This

subdivision applies to an act of possessing a firearm only if the possession is verified by an employee of the district.

- b. Brandishing a knife at another person.
 - c. Unlawfully selling a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.
 - d. Committing or attempting to commit a sexual assault as defined in subdivision (n) of Section 48900 or committing a sexual battery as defined in subdivision (n) of Section 48900.
 - e. Possession of an explosive.
4. The governing board shall order a pupil expelled upon finding that the pupil committed an act listed in Section 3 (48915(c)) for a minimum of one year from the date of the expulsion, except that the governing board may set an earlier readmission date on a case-by-case basis, and shall refer that pupil to a program of study that meets all the following conditions:
- a. Is appropriately prepared to accommodate pupils who exhibit discipline problems.
 - b. Is not provided at a comprehensive middle, junior or senior high school, or at any elementary school.
 - c. Is not housed at the schoolsite attended by the pupil at the time of the suspension.
(Education Code Section 48915(c))
5. The governing board may order a pupil expelled upon recommendation by the principal, superintendent, hearing officer/administrative panel appointed pursuant to paragraph II.F., and upon finding that the pupil violated any of the following:
- a. Caused or attempted to cause damage to school property or private property. [Education Code Section 48900(f)].
 - b. Stolen or attempted to steal school property or private property. [Education Code Section 48900(g)].
 - c. Possessed or used tobacco, or any products containing tobacco or nicotine products, including, but not limited to, cigarettes, cigars, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets, and betel. However, this does not prohibit use or possession by a pupil of his or her own prescription products. [Education Code 48900(h)].
 - d. Committed an obscene act or engaged in habitual profanity or vulgarity. [Education Code Section 48900(i)].

- e. Had unlawful possession of or unlawfully offered, arranged, or negotiated to sell any drug paraphernalia, as defined in Section 11014.5 of the Health and Safety Code. [Education Code Section 48900 (j)].
- f. 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 Section 48900(k)].
- g. Knowingly received stolen school property or private property. [Education Code Section 48900(l)].
- h. Possessed an imitation firearm. As used in this section, "imitation firearm" means 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 Section 48900(m)].
- i. Committed sexual harassment as defined in Education Code Section 212.5. This conduct must be considered by a reasonable person of the same gender as the victim to be sufficiently severe or pervasive to have a negative impact upon the individual's academic performance or to create an intimidating, hostile, or offensive educational environment. This sub-section shall not apply to pupils enrolled in kindergarten and grades 1 to 3, inclusive. (Education Code Section 48900.2).
- j. Caused, attempted to cause, threatened to cause, or participated in an act of hate violence as defined in subdivision (e) of Education Code Section 33032.5. This sub-section applies to pupils enrolled in any of grades 4 to 12 inclusive. (Education Code Section 48900.3)
- k. Intentionally engaged in harassment, threats, or intimidation, directed against school district personnel or pupils, 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 either school personnel or pupils by creating an intimidating or hostile education environment. This sub-section applies to pupils enrolled in any of grades 4 to 12, inclusive. (Education Code Section 48900.4)

and either of the following:

- (1) that other means of correction are not feasible or have repeatedly failed to bring about proper conduct, or
 - (2) that due to the nature of the violation, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.
6. The governing board shall refer a pupil who has been expelled pursuant to subsection 2 or 5 to a program of study that meets all the conditions specified in

subsection 4. However, pupils expelled pursuant to subsection 5 may be referred to a comprehensive middle, junior or senior high school, or an elementary school, if the county superintendent of schools certifies that an alternative program of study is not available at a site away from a comprehensive middle, junior or senior high school, or an elementary school.

(Education Code Sections 48900(f)-(m), 48900.2, 48900.3, 48900.4, 48915)

D. Expulsion: Pupils with Previously Identified Exceptional Needs
(Education Code Section 48915.5)

1. Conditions for Expulsion

- a. IEP Meeting. In a matter involving a pupil with previously identified exceptional needs who is currently enrolled in a special education program, the governing board may order a pupil expelled pursuant to Education Code Section 48915, subdivisions (b) and (d) (see paragraph II.C.) only if an IEP team meeting is convened (i) to initiate a functional behavioral assessment of the pupil or to review and modify an existing functional behavioral intervention plan and (ii) to conduct a manifestation determination review of the relationship between the pupil's disability and the behavior subject to disciplinary action. (34 C.F.R. 300.520(b) and 300.523)
- b. Notice of Procedural Safeguards. Not later than the date on which the decision to proceed with the expulsion process is made, the parent of the pupil shall be notified of the decision and given a notice of procedural safeguards. (34 C.F.R. 300.523(a))
- c. Manifestation Determination.
 - (1) The IEP team plus other qualified personnel must consider all relevant information, including evaluation and diagnostic results, relevant information supplied by the pupil's parents, observations of the pupil and the pupil's IEP and placement, and
 - (2) Determine that in relationship to the behavior: (a) the pupil's IEP and placement were appropriate, (b) the special education services, supplementary aids and services and behavior interventions strategies provided were consistent with the IEP and placement, (c) the pupil's disability did not impair the ability of the pupil to understand the impact and consequences of the behavior, and (d) the pupil's disability did not impair the ability of the pupil to control the behavior. (34 C.F.R. 300.523.)
 - (3) If any of the standards in paragraph (ii), above, have not been met, the behavior must be deemed a manifestation of the pupil's disability, and no expulsion may be ordered. (34 C.F.R. 300.523(d))

- (4) If the behavior is determined not to be a manifestation of the pupil's disability, the pupil may be expelled pursuant to the disciplinary procedures applicable to pupils without disabilities. The special education records and disciplinary records of the pupil shall be transmitted for consideration by the person(s) making the final determination regarding the expulsion. (34 C.F.R. 300.524(a) and (b))
 - d. Services after Tenth Day. After the pupil's tenth day of removal from school by either suspension or expulsion, the pupil shall be provided services to the extent necessary to enable the pupil to appropriately progress in the general curriculum and appropriately advance toward achieving his/her IEP goals. (Ed. Code sec. 48915.5; 34 C.F.R. 300.121(d) and 300. 520(a)(1)(ii))
 2. Unilateral Removal Pending Expulsion based on Weapons, Controlled Substances and Illegal Drugs.
When a pupil is charged with carrying a "dangerous weapon" as defined under 18 U.S.C. 930(g)(2) or with knowingly possessing, using, selling, or soliciting the sale of a controlled substance, the Superintendent, or designee, may order the pupil removed from school and placed in an alternative educational setting for up to 45 days. The pupil's parent shall be given notice as set forth in **II.D.1.b., above.,** and **II.D.1.c, above,** shall apply. (45 C.F.R. 300.520(a)(2))

E. Expulsion: Procedures

1. Recommendation to Governing Board
 - a. Where the principal or superintendent recommends to the governing board the expulsion of a pupil, he will prepare a report of the case to include:
 - (1) The pupil's academic and attendance records.
 - (2) A chronological account of the development of the case and a statement of the conduct and recitation of the facts leading to the decision to recommend expulsion.
 - (3) A description of actions taken by the school to correct the pupil's previous misbehavior and the effect the corrective action has had on the pupil.
 - (4) A record of contacts with other agencies and the results of such contacts.
 - (5) A description of contacts with the parents or guardian made by school personnel, including the purpose of the contacts, apparent reaction of parents or guardians, and effect on the pupil's behavior.

- (6) A copy of the summary of the final parent-pupil-principal conference, if any.
 - (7) A recommendation as to the time when the case should be reviewed, and the conditions, if any, which should be met before the pupil's return to school.
 - (8) For pupils with previously identified exceptional needs, a copy of the pupil's special education and disciplinary records. (34 C.F.R. 300.524(a) and (b))
- b. This report may be used in determining disciplinary action should it find that the pupil committed any of the acts enumerated in Section II.C.
 - c. A copy of the report shall be provided to the pupil and pupil's parent/guardian.

2. Pupil's Right to Hearing

- a. An expulsion hearing shall be held within thirty schooldays after the date the principal or the superintendent of schools determines the pupil has committed any of the acts enumerated in Education Code Section 48900 et seq. (See paragraph II.C.)
- b. **The pupil** may request in writing a postponement of the hearing not to exceed thirty calendar days of an expulsion hearing. Any additional postponement may be granted at the discretion of the governing board. (Education Code Section 48918(a))
- c. **The Superintendent** or the superintendent's designee may, for good cause, extend the time period for the expulsion hearing for an additional five school days, in the event that compliance by the governing board with the time requirements is impracticable. Reasons for the extension of the time for the hearing shall be included as part of the record at the time the expulsion hearing is conducted. Once the hearing begins, it shall be conducted with reasonable diligence and concluded without unnecessary delay. (Education Code Section 48918(a))

3. Written Notice of the Hearing (Education Code Section 48918(b))

Written notice of the hearing shall be forwarded to the pupil and the pupil's parent/guardian at least ten calendar days prior to the date of the hearing. Such notice shall include:

- a. The date and place of the hearing.
- b. A statement of the specific facts and charges upon which the proposed expulsion is based.

- c. A copy of disciplinary rules that relate to the alleged violation.
- d. A notice of the parent, guardian or pupil's obligation pursuant to subdivision (b) of Section 48915.1 to notify any other school district in which the pupil attempts to enroll of the pupil's suspension for an offense listed in Section 48915. (See policy II C.)
- e. The opportunity of the pupil or the pupil's parent/guardian to:
 - (1) appear in person or to employ and be represented by legal counsel or by a nonattorney adviser.
 - (2) inspect and obtain copies of all documents to be used at the hearing.
 - (3) confront and question all witnesses who testify at the hearing.
 - (4) question all evidence presented, and present oral documentary evidence on the pupil's behalf, including witnesses.
- f. In a hearing in which a pupil is alleged to have committed or attempted to commit a sexual assault as specified in subdivision (n) of Section 48900 or committing a sexual battery as defined in subdivision (n) of Section 48900, a complaining witness shall be given five days' notice prior to being called to testify, and shall be entitled to have up to two adult support persons, including, but not limited to, a parent, guardian, or legal counsel, present during their testimony. Prior to a complaining witness testifying, support persons shall be admonished that the hearing is confidential. Nothing in this subdivision shall preclude the person presiding over an expulsion hearing from removing a support person whom the presiding person finds is disrupting the hearing. If one or both of the support persons is also a witness, the provisions of Section 868.5 of the Penal Code shall be followed for the hearing.

4. Conduct of Hearing

- a. Closed Session: Notwithstanding the provisions of Government Code Section 54953 and Education Code Section 35145, the governing board shall conduct a hearing to consider the expulsion of the pupil in a session closed to the public, unless the pupil requests in writing at least five days prior to the hearing, that the hearing be conducted at a public meeting. If such request is made of the governing board, the meeting shall be public. Whether the expulsion hearing is held in closed or public session, the board may meet in closed session to deliberate and determine whether the pupil should be expelled. The parent/guardian of the pupil, the pupil, and the counsel of the pupil, shall be allowed to attend the closed session if the governing board admits any other person to the closed session. (Education Code Section 48918(c))

- b. Public Meeting , Rights of Complaining Witness. If the hearing is to be conducted at a public meeting, and there is a charge of committing or attempting to commit a sexual assault as defined in subdivision (n) of Section 48900 or committing a sexual battery as defined in subdivision (n) of Section 48900, a complaining witness shall have the right to have his or her testimony heard in a session closed to the public when testifying at a public meeting would threaten serious psychological harm to the complaining witness and 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 means of closed-circuit television. [Education Code Section 48918(c)].
- c. Record of Hearing: A record of the hearing shall be made. Such record may be maintained by any means, including electronic recording, so long as a reasonably accurate written and complete transcription of the proceedings can be made. (Education Code Section 48918(c))
- d. Failure to Make Objections: If the pupil, parent, guardian or attorney fails to object at the hearing that these rules are not being properly followed, or that any other law or requirement of due process is not being followed, the objections shall be deemed waived.
- e. Presentation of Evidence: Upon a finding that good cause exists, the governing board or hearing officer/administrative panel appointed under paragraph II.F., may determine that either the identity of a witness or the testimony of the witness at the hearing, or both may subject the witness to an unreasonable risk of psychological or physical harm. Upon this determination, the testimony of the witness may be presented at the hearing in the form of sworn declarations which shall be examined only by the governing board or the hearing officer/administrative panel appointed under paragraph II.F. Copies of these sworn declarations, which are edited to delete the name and identity of the witness, shall be made available to the pupil. (Education Code Section 48918(f))
- f. Technical Rules of Evidence Do Not Apply: Technical rules of evidence shall not apply to the hearing except that relevant evidence may be admitted and used as proof only if it is the kind of evidence which reasonable persons are accustomed to rely on in the conduct of serious affairs. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding except as provided in paragraph II.E.4.d. above or unless it would be admissible over objection in a civil action. The decision of the governing board to expel shall be based upon the substantial evidence showing that the pupil committed any of the above acts enumerated in paragraph II.C. (Education Code Section 48918(h))
- g. Hearings Which Include Section 48900(n) Allegations. In hearings which include an allegation of committing or attempting to commit a sexual

assault or committing a sexual battery, as defined in subdivision (n) of Section 48900, evidence of specific instances of a complaining witness' prior sexual conduct is to be presumed inadmissible and shall not be heard absent a determination by the person(s) conducting the hearing that extraordinary circumstances exist requiring that the evidence be heard. Before the person conducting the hearing makes the determination of extraordinary circumstances, the complaining witness shall be provided notice and an opportunity to present opposition to the introduction of the evidence. In the hearing on the admissibility of the 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 the complaining witness is not admissible for any purpose.

h. Subpoenas:

- (1) Before the hearing has commenced, the governing board may issue subpoenas at the request of either the superintendent or the superintendent's designee or the pupil. Subpoenas shall only be issued for the personal appearance of percipient witnesses at the hearing. After the hearing has commenced, the governing board, hearing officer or administrative panel may issue subpoenas at the request of the superintendent, superintendent's designee or the pupil. All subpoenas shall be issued in accordance with Sections 1985, 1985.1, and 1985.2 of the Code of Civil Procedure. Enforcement of subpoenas shall be done in accordance with Section 11525 of the Government Code.
- (2) Any objection raised by the superintendent or the superintendent's designee or the pupil to the issuance of subpoenas may be considered by the governing board in closed session, or in open session, if so requested by the pupil before the meeting. Any decision by the governing board in response to an objection to the issuance of subpoenas shall be final and binding.
- (3) If the governing board, hearing officer, or administrative panel determines, in accordance with subdivision (f) of Section 48918, that a percipient witness would be subject to an 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 provided for in subdivision (f).
- (4) Service of process shall be extended to all parts of the state and shall be served in accordance with Section 1987 of the Code of Civil Procedure. All witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the state or any political subdivision thereof, shall receive fees, and all witnesses appearing pursuant to subpoena, except the parties, shall receive mileage in the

same amount and under the same circumstances as prescribed for witnesses in civil actions in a superior court. Fees and mileage shall be paid by the party at whose request the witness is subpoenaed.

- i. Final Action By Governing Board: Whether the pupil expulsion hearing is conducted in closed or public session, by the governing board or by a hearing officer/administrative panel appointed under paragraph II.F., the final action to expel shall be taken by the governing board at a public session. (Education Code Section 48918(i))
- j. Time of Decision: The decision of the governing board, if it conducts the expulsion hearing, whether to expel a pupil shall be made within 10 schooldays following the conclusion of the hearing, unless the pupil requests in writing the decision be postponed.

If the governing board does not conduct the hearing or if the governing board does not meet on a weekly basis, the decision of the governing board whether to expel a pupil shall be made within 40 schooldays after the date of the pupil's removal from his or her school of attendance for the incident on which the expulsion is based, unless the pupil requests in writing that the decision be postponed. (Education Code 48918(a))

- k. Maintenance of Records: The governing board will maintain a record of each expulsion, including the cause therefor, in the form of an ongoing log of pupil expulsions. The log shall contain the following information: the school attended by the expelled pupil, the date of the expulsion hearing, the cause for expulsion, and the date set for applying for readmission. However, the log shall not identify the expelled pupil by name. The log shall be made available to the public in the District's administration office. The expulsion order shall be maintained in the pupil's mandatory interim record and sent to any school in which the student subsequently enrolls upon a request by the admitting school for the pupil's school record. (Education Code Section 48918(j))

5. Written Notice to Expel

Written notice of the decision to expel or to suspend the enforcement of an expulsion order shall be sent to the pupil or pupil's parent/guardian by the superintendent or the superintendent's designee. Such notice shall include notice of the right to appeal such expulsion to the county board of education, a notice of the alternative educational placement to be provided to the pupil during the time of expulsion and of the parent, guardian or pupil's obligation pursuant to subdivision (b) of Section 48915.1, upon the pupil's enrollment in a new school district, to inform that school district of the pupil's expulsion. The pupil and pupil's parent/guardian shall be notified at the time the expulsion order is entered of the procedure for filing and processing a request for readmission, and the process for the required review of all expelled pupils for readmission. (See paragraph II.G.2). Notwithstanding the completion of the readmission process, the governing board may deny readmission. (Education Code Sections 48916, 48918(j))

6. Special Rules and Regulations For Hearings Involving Allegations Pursuant to Section 48900(n).
 - a. At the time that the expulsion hearing is recommended, the complaining witness shall be provided with a copy of the applicable disciplinary rules and advised of his or her right to: (1) receive five days' notice of the complaining witness's scheduled testimony at the hearing, (2) have up to two adult support persons of his or her choosing, present in the hearing at the time he or she testifies; and (3) to have the hearing closed during the time they testify pursuant to subdivision (c) of Section 48918.
 - b. An expulsion hearing may be postponed for one schoolday in order to accommodate the special physical, mental, or emotional needs of a pupil who is the complaining witness where the allegations arise under subdivision (n) of Section 48900.
 - c. A non-threatening environment shall be provided for complaining witnesses in order to better enable them to speak freely and accurately of the experiences that are the subject of the expulsion hearing, and to prevent discouragement of complaints. A room separate from the hearing room shall be provided for use by complaining witnesses prior to and during breaks in testimony. In 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 or she may leave the hearing room. The person conducting the hearing may arrange the seating within the hearing room of those present in order to facilitate a less intimidating environment for the complaining witness. The person conducting the hearing may limit the time for taking the testimony of a complaining witness to the hours he or she is normally in school, if there is no good cause to take the testimony during other hours. The person conducting the hearing may permit one of the complaining witness's support persons to accompany him or her to the witness stand.
 - d. Whenever any allegation is made of conduct violative of subdivision (n) of Section 48900, complaining witnesses and accused pupils are to be advised immediately to refrain from personal or telephonic contact with each other during the pendency of any expulsion process.

F. Alternative Hearing By Hearing Officer or Panel

1. In lieu of conducting an expulsion hearing itself, the governing board may contract with the county hearing officer, or with the Office of Administrative Hearings of the State of California for a hearing officer to conduct the hearing. Alternatively, the board may appoint an impartial administrative panel composed of three or more certificated personnel, none of whom shall be members of the Governing Board or employed on the staff of the school in which the pupil is enrolled. (Education Code Section 48918(d) and (f))

2. Within three school days following the hearing, the hearing officer or administrative panel shall determine whether to recommend the expulsion of the pupil to the governing board. If the hearing officer or administrative panel decides not to recommend expulsion, the expulsion proceedings shall be terminated and the pupil shall immediately be reinstated, or permitted to return to a classroom instructional program, any other instructional program, a rehabilitation program, or any combination of these programs. Placement in one or more of these programs shall be made by the superintendent or the superintendent's designee after consultation with school district personnel, including the pupil's teachers, and the pupil's parent or guardian. The decision not to recommend expulsion shall be final. (Education Code Section 48918(e))
3. If the hearing officer or administrative panel recommends expulsion, findings of fact in support of the recommendation shall be prepared and submitted to the governing board. All findings of fact and recommendations shall be based solely on the evidence adduced at the hearing. If the governing board accepts the recommendation calling for expulsion, acceptance shall be based either upon a review of the findings of fact and recommendations submitted by the hearing officer or panel or upon the results of any supplementary hearing conducted pursuant to paragraph II.E.4. that the governing board may order. (Education Code Section 48918(f))
4. A hearing conducted by the hearing officer or administrative panel shall be conducted in accordance with paragraph II.E.4. (Education Code Section 48918(d))

G. Expulsion: Readmission; Rehabilitation Plan (Education Code Sections 48916, 48918(e))

1. Upon the hearing officer's administrative panel's recommendation against expulsion, or following the governing board's own decision after the hearing not to expel, the pupil shall be reinstated immediately to a classroom instructional program, rehabilitation program or any combination of such programs by the superintendent or superintendent's designee after consultation with district personnel including the pupil's teacher(s) and the parent/guardian of the pupil. (Education Code Section 48918(e))
2. An expulsion order shall remain in effect until the governing board orders the readmission of the pupil. At the time the governing board orders expulsion of a pupil for an act other than those described in subdivision (c) of Section 48915 (Policy Section II C 3), the governing board shall set a date not later than the last day of the semester following the semester in which the expulsion occurred, when the pupil shall be reviewed for readmission to a school maintained by the district or to the school the pupil last attended. If an expulsion is ordered during summer session or the intersession period of a year-round program, the governing board is to set a date, not later than the last day of the semester following the summer session or intersession period in which the expulsion occurred, when the pupil shall be reviewed for readmission to a school maintained by the district or to the school the pupil last attended. For pupils expelled pursuant to 48915(c) the earliest date for readmission shall be one-year from the date the expulsion

occurred, except that the governing board may set an earlier readmission date on a case-by-case basis. At the time of the expulsion order the governing board shall recommend a plan for rehabilitation for the pupil, which may include, but is not limited to:

- a. Periodic review and assessment at the time of review for readmission.
 - b. Recommendations for improved academic performance, tutoring, special education assessments, job training, counseling, employment, community service and/or other rehabilitation programs.
 - c. With parental/guardian consent, enrollment in a county-supported drug rehabilitation program if the offense was related to controlled substances as defined in Sections 11054 to 11058, inclusive of the Health and Safety Code, or alcohol. (Education Code Section 48916.5)
3. A written request for review of expulsion action and request for readmission shall be submitted by the parent/guardian to the superintendent or the superintendent's designee.
 4. The superintendent or the superintendent's designee will hold a conference with the parent/guardian and the pupil. At the conference the conditions for readmission will be reviewed and verification obtained that the conditions have been met. School regulations will be reviewed and the pupil and the pupil's parent/guardian will be asked to indicate in writing their willingness to comply with the regulations.
 5. The superintendent will transmit the request to the governing board for consideration together with the superintendent's recommendation. The governing board may consider the request in closed session, however, the consideration will be in open session if a written request for open session is received from the pupil or the pupil's parent/guardian. The governing board shall readmit the pupil, unless the governing board makes a finding that the pupil has not met the conditions of the rehabilitation plan or continues to pose a danger to campus safety or to other pupils or employees of the district.
 6. If the governing board denies the readmission of an expelled pupil pursuant to paragraph 5, above, the governing board shall make a determination either to continue the placement of the pupil in the alternative educational program initially selected for the pupil, or to place the pupil in another program that may include, but need not be limited to, serving expelled pupils, including placement in county community school.
 7. The superintendent will notify the pupil or the pupil's parent/guardian, by registered or certified mail, or by personal delivery, of the decision regarding readmission of the pupil in school. If readmission is denied, the written notice shall include the reasons for denying readmittance and the determination of the educational program placement made by the governing board. The expelled pupil shall enroll in that program unless the parent or guardian of the pupil elects to enroll the pupil in another school district.

H. Expulsion: Suspension of Expulsion (Education Code Section 48917)

1. Suspension of the Expulsion: The governing board, upon voting to expel a pupil, may suspend the enforcement of the expulsion order for not more than one calendar year. The governing board's criteria for suspending the enforcement of an expulsion order shall be applied equally to all pupils including individuals with exceptional needs.
2. Conditions of Suspension of Expulsion Order
 - a. As a condition of the suspension of the expulsion order, the governing board may assign the pupil to a school, class or program which it deems appropriate for the pupil's rehabilitation. The rehabilitation program may provide for the involvement of the pupil's parent or guardian in his or her child's education in ways that are specified in the program. Refusal by the parent or guardian to participate in the rehabilitation program shall not be considered in the governing board's determination as to whether the pupil has satisfactorily completed the program.
 - b. During this period of suspension of the expulsion order, the pupil shall be on probationary status.
 - c. The suspension of the expulsion order may be revoked by the governing board upon the pupil's commission of any of the acts enumerated in Education Code Section 48900 or 48900.2 as stated under paragraph II.C. above, or for any violation of the rules and regulations governing pupil conduct.
3. Revocation of Expulsion Order: Upon revocation of the suspension of an expulsion order, a pupil may be expelled under the terms of the original expulsion order.
4. Readmission of Pupil: Upon satisfactory completion of the rehabilitation assignment of a pupil, the governing board shall reinstate the pupil in a school or the district and may order the expungement of any or all records of the expulsion proceedings.

I. Expulsion: Right to Appeal

The pupil or the pupil's parent/guardian is entitled to file an appeal of the decision of the governing board to the county board of education.

The appeal must be filed within thirty days following the decision of the governing board to expel, even if the expulsion order is suspended and the pupil is placed on probationary status. (Education Code Sections 48917 and 48919)

J. Expelled Individuals, Enrollment (Education Code Section 48915.1, 48915.2)

1. A pupil expelled from school for any of the offenses listed in subdivision (a) or (c) of Section 48915, shall not be permitted to enroll in any other school or school district during the period of expulsion unless it is a community school pursuant to subdivision (c) of Section 1981, a juvenile court school, as described in Section 48645.1, or a community day school pursuant to Sections 48660 et seq. (Education Code Section 48915.2)
2. If the governing board receives a request from an individual who has been expelled from another school district for an act other than those described in subdivision (a) or (c) of Section 48915, for enrollment in a school maintained by the school district, the board shall hold a hearing to determine whether that individual poses a continuing danger either to the pupils or employees of the school district. The hearing and notice shall be conducted in accordance with the rules and regulations governing procedures for the expulsion of pupils as described in Section 48918 and this policy. The school district may request information from another school district regarding a recommendation for expulsion or the expulsion of an applicant for enrollment. The school district receiving the request shall respond to the request with all deliberate speed but shall respond no later than five working days from the date of the receipt of the request.
3. If a pupil has been expelled from his or her previous school for offenses other than those listed in subdivision (a) or (c) of Section 48915, the parent, guardian, or pupil, if the pupil is emancipated or otherwise legally of age, shall, upon enrollment, inform the school district of his or her status with the previous school district. If this information is not provided as required and the school district otherwise learns the pupil was expelled from the previous school, the lack of compliance shall be recorded and discussed in the hearing required pursuant to paragraph 2, above.
4. The governing board may make a determination to deny enrollment to an individual who has been expelled from another school district for an act other than those described in subdivision (a) or (c) of Section 48915, for the remainder of the expulsion period after a determination has been made, pursuant to a hearing, that the individual poses a potential danger to either the pupils or employees of the school district.
5. The governing board, when making its determination whether to enroll an individual who has been expelled from another school district for acts other than those described in subdivision (a) or (c) of Section 48915, may consider the following options:
 - a. Deny enrollment.
 - b. Permit enrollment.
 - c. Permit conditional enrollment in a regular school program or another educational program.

6. Notwithstanding any other provision of law, the governing board, after a determination has been made, pursuant to a hearing, that an individual expelled from another school district for an act other than those described in subdivision (a) or (c) of Section 48915 does not pose a danger to either the pupils or employees of the school district, shall permit the individual to enroll in a school in the school district during the term of the expulsion, provided that he or she, subsequent to the expulsion, either has established legal residence in the school district, pursuant to Section 48200, or has enrolled in the school pursuant to an interdistrict agreement executed between the affected school districts pursuant to Chapter 5 of the Education Code (commencing with Section 46600). (Education Code Section 48915.1).

7. After a determination has been made, pursuant to a hearing, that an individual expelled from another school district for any act described in subdivision (a) or (c) of Section 48915 does not pose a danger to either the pupils or employees of the school district, the governing board may permit the individual to enroll in a school in the school district after the term of the expulsion, subject to the following conditions:
 - a. He or she has established legal residence in the school district, pursuant to Section 48200.
 - b. He or she has enrolled in the school pursuant to an interdistrict agreement executed between the affected school districts pursuant to Chapter 5 of the Education Code (commencing with Section 46600).

(Education Code Section 48915.1, 48915.2)

Legal References: Education Code Sections 33032.5, 35145, 35146, 35291, 46300, 48900-48925, 49069, 56026, and 56340; Government Code Sections 54950 and 54953; Health and Safety Code (commencing with Section 11053) of Division 10, Chapter 2, and 11014.5; Penal Code Sections 245, 422.6, 422.7, 422.75, 626.9 and 626.10; and Section 921 of Title 18 of the United States Code; and Section 1415 of Title 20 of United States Code; and Sections 104.35 and 300.519-300.524 of Title 34 of the Code of Federal Regulations.