

Student Discipline: What's in the Law?

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CALIFORNIA
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Agenda

- Presenters Introduction
- Resources
- Student Misbehavior
- Suspension and Expulsion from School
- Suspension from the Classroom
- Suspension of Students in Special Education
- School Discipline Policy (if time permits)
- Parent Behavior (if time permits)
- Questions

California
LEGISLATIVE INFORMATION



Today's Schedule



Bill Information



California Law



California



LEGISLATIVE INFORMATION

CODE SEARCH

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TODAY'S SCHEDULE

Thu, Sep 15, 2022

FLOOR SCHEDULE

[ASSEMBLY RECESS](#)
STATE CAPITOL

WELCOME

Welcome to the California Legislative Information website!

We are pleased to announce new website enhancements to improve the readability of Bill and Code text. Multi-level indentation formatting has been implemented throughout the sections of each bill's "Text" tab. In addition, the new formatting has been added to all of the sections of text under the California Law.

Measures prior to 1999 can still be found at <http://leginfo.ca.gov> which will remain as an archive for legislative information.

To access a complete listing of California Law Codes and Bill Search features, click the California Law or Bill Information Tabs on the Tabbed Panel above.

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New Volume of House Precedents

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Featured Content December 10, 2019 - Anniversary of the Universal Declaration of Human Rights

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International Day of Persons with Disabilities

Featured Content December 3, 2019 – Proclaimed by the United Nations in 1992

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■ Student Misbehavior

- Before
- During
- After
- Property Damage

[Before misbehavior]

Notification of Dangerous Students

- District shall inform the teacher.
- Info shall come from either district records or info received from a law enforcement agency.
- Willful failure to notify is a misdemeanor, punishable by up to 6 months in county jail and/or up to a \$1000 fine!
- Info provided shall be from previous three years.
- Shall be received in confidence for the limited purpose for which it was provided and shall not be further disseminated by the teacher.

Ed Code 49079

[Before misbehavior]

Who is a “Dangerous Student”?

The pupil engaged in, or is reasonably suspected to have engaged in:

- Violence
- Threats of violence
- Drugs
- Weapons
- Damaged or stole school property
- Attempted or committed sexual assault
- Sexual harassment
- Intimidated witnesses
- Etc.

Ed Codes 48900 and .2, .3, .4, .7

[During misbehavior]

Requirements to Act

Every teacher in the public schools shall hold pupils to a strict account for their conduct on the way to and from school, on the playgrounds, or during recess.

Ed Code 44807

[During misbehavior]

Physical Control

- May use the same degree of physical control as a parent would...
- but in no event shall exceed the amount reasonably necessary!
- to maintain order, protect property, or protect the health and safety of pupils, or to maintain proper and appropriate conditions conducive to learning.

Ed Code 44807

[During misbehavior]

Use of Force

- May use the amount of force that is reasonable and necessary... to quell a disturbance threatening:
 1. physical injury to persons or damage to property,
 2. for purposes of self-defense, or
 3. to obtain possession of weapons or other dangerous objects within the control of the pupil...
- Such use, is not and shall not be construed to be willful infliction of, or willfully causing the infliction of, physical pain on a pupil.

Ed Code 49001

[During misbehavior]

Physical Restraint

Reducing the ability of a pupil to move freely.

It does not include temporary touching or holding of the hand, wrist, arm, shoulder, or back to induce a pupil who is acting out to walk to a safe location.

Ed Code 49005.1

Seclusion

Locking a pupil alone in a room or area.

Only permitted in a facility that is licensed or permitted by state law to use a locked room.

Ed Code 49005.8

[During misbehavior]

Physical Restraint & Seclusion (cont.)

“Restraint and seclusion should only be used as a safety measure of last resort, and should never be used as punishment or discipline or for staff convenience.”

Ed Code 49005

This applies to all pupils, including individuals with exceptional needs.

Ed Codes 49006.4 & 56521.1

[During misbehavior]

Injurious Objects

Employees may take “any injurious objects” from “any pupil upon school premises or while under the authority of school personnel.”

Ed Code 49331

[After misbehavior]

Law Enforcement

Any employee attacked, assaulted, or physically threatened by any pupil has the duty to promptly report the incident to law enforcement.

The supervisor of the employee, if they have knowledge of the incident, also has a duty to promptly inform law enforcement.

Failure to make the report is punishable by a fine of up to \$1000!

Ed Code 44014 (a)

[After misbehavior]

Blocking and Retaliation for Involving Law Enforcement

No person in the district is permitted to inhibit or impede the making of the report.

Any act to do so is punishable by a fine from \$500 to \$1000.

Ed Code 44014 (c)

No person in the district shall impose any sanctions against a person under a duty to make the report.

Ed Code 44014 (d)

[After misbehavior]

Involving Law Enforcement with Students in Special Education

Nothing prohibits an agency from reporting a crime committed by a child with a disability.

Nothing prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

34 CFR §300.535

Title 34

Code of Federal Regulation

Section 300.535

[After misbehavior]

Administration's Duty to Inform Law Enforcement

The principal or designee, shall notify the appropriate law enforcement:

- (a) Prior to suspension or expulsion if the pupil violated Penal Code 245
- (b) Within one school day after suspension or expulsion, if pupil violated subdivision (c) or (d) of Section 48900
- (c) Shall notify for possession or sale of narcotics or a controlled substance or violation of Section of 626.9 or 626.10 of the Penal Code, or paragraph 1 or 5 of subsection (c) of Section 48915 by a pupil or nonpupil

Ed Code 48902

[After misbehavior]

Reporting Requirements

Ed Code 48902 lists offenses, and references other Ed Codes as well as Penal Codes, which then reference additional Ed Codes and Penal Codes, that list offenses in which the principal or designee must notify law enforcement.

Offenses are primarily related to things that can shoot, cut, or stab; drugs, alcohol, or intoxicants; and others.

[FYI]

Someone Called the Police on You?!

- ANYONE wants you to answer questions, politely inform them that you will answer questions once you have talked with your attorney.
- If you are a member of the union, contact your President.
- Take full advantage of your right to remain silent!
- Don't sign, put anything in writing, or resign.

Property Damage

Parents of students who willfully damage the personal property of any school employee are liable for the damages.

Ed Code 48904, Civil Code 1714.1, also may be in Board Policy

If District property is damaged, they may withhold the grades, diploma, and transcripts until the damages have been paid for or voluntary work completed if unable to pay.

Ed Code 48904

Recording During In-Person Instruction

Prohibited without prior consent of the teacher and the principal.

“Any pupil violating this section shall be subject to appropriate disciplinary action.”

Ed Code 51512

However,

A teacher may still be disciplined, based on the illegal recording.

A teacher has no “reasonable expectation of privacy” so the recording can be used against them.

Evens v. Superior Court of LA County

■ Suspension and Expulsion *from School*

- Who Decides
- Grounds for Suspension and Expulsion
- Rules for Suspension
- Report Requirements
- Exceptions

Who Decides?

Suspension *from school*

Principal or Superintendent.

Expulsion

School Board, as recommended by Principal or Superintendent.

Ed Code 48900

Grounds for Suspension and Expulsion

- Causing physical injury
- Firearms, knives, explosives
- Drugs and paraphernalia
- Tobacco
- Robbery
- Stealing
- Extortion
- Damaging property
- Obscene acts
- Habitual profanity or vulgarity
- Receiving stolen property
- Imitation firearm
- Sexual assault
- Intimidating witnesses
- Hazing
- Bullying

Ed Code 48900

Rules for Suspension

Admin is encouraged to provide alternatives to suspension or expulsion

Ed Code 48900

Suspension shall be imposed only when other means of correction fail to bring about proper conduct

Ed Code 48900.5

Rules for Suspension (cont.)

No longer than five (5) consecutive school days.

Ed Code 48911

No more than twenty (20) days per year. Thirty (30) if a transfer from another school.

Ed Code 48903

Teacher can require missed assignments or tests be made up.

Ed Code 48913

For Your Information

Suspension shall be preceded by a conference between the principal, the pupil and, whenever practicable, the school employee who referred the pupil.

The pupil shall be informed of:

1. the reason for the disciplinary action, and the evidence against him or her,
2. the other means of correction that were attempted before the suspension,
3. and given the opportunity to present his or her version and evidence in his or her defense.

A conference is not required if the principal determined that an emergency situation existed.

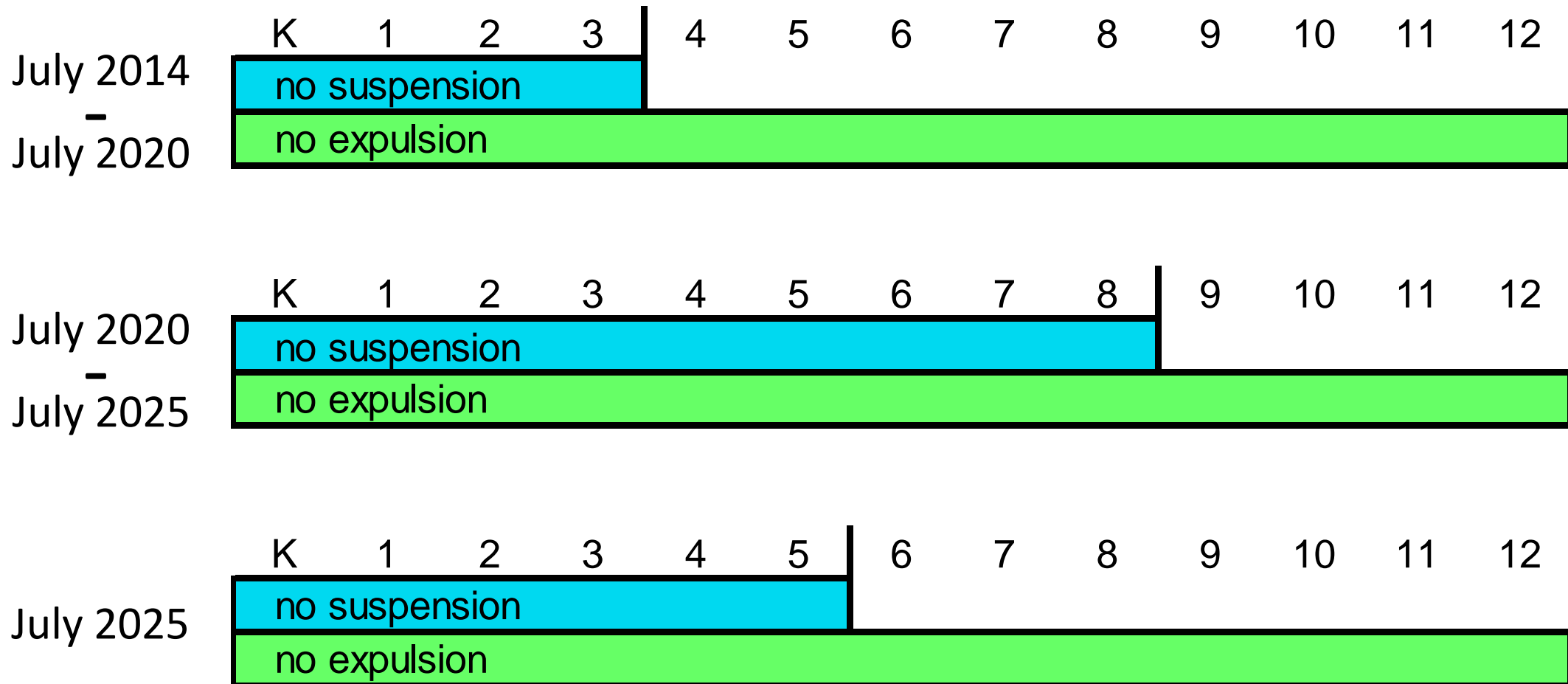
Ed Code 48911

For Your Information

Instead of suspension or expulsion, a pupil may be required to perform community service on school grounds or, off school grounds, during the pupil's non-school hours.

Ed Code 48900.6

Exclusions: Disruptive Behavior & Willful Defiance



Ed Code 48900 (k)

■ Suspension from *the Classroom*

- What is it?
- Prep Work
- More Work
- Follow-up Work

What is Suspension from the Classroom?

- For acts listed in 48900, *including* disruptive behavior & willful defiance!
- For the day of, and the day following!
- Pupil may not be placed in another classroom.
- Pupil may not be put back in the original classroom, during the period of the suspension, without concurrence of the teacher and principal.

Ed Code 48910

Prep-work

1. “Suspension...shall be imposed only when other means of correction fail to bring about proper conduct.” - Ed Code 48900.5
2. Document the strategies you previously tried.
3. Ask for support from colleagues and admin.
4. Inform your colleagues about 48910.
5. It is recommended you provide work for the student.

More Work

- Must immediately report the suspension and send the pupil to the principal
- JH and HS students are suspended day of and following, for that period only 😞

Ed Code 48910

- Removal shall not occur more than once every five (5) schooldays.

Ed Code 48925 (d)(3)

Follow-up Work

- Teacher must make an attempt at a parent-teacher conference.
- School counselor or school psychologist may attend.
- Principal shall attend if requested by the parent or teacher.

Ed Code 48910

■ Suspension of Students in Special Education

- How is it Different?
- Special Considerations
- Extreme Cases

How is Special Education Different?

Nearly EVERYTHING to this point, also applies to students with an IEP!

For the first 10 days of school suspension, they are under the same rules as any other student.

For those first 10 days, schools do not need to provide educational services.*

Title 34, Code of Federal Regulations (CFR) § 300.530

These students are also able to be suspended from the classroom.

Special Considerations

- More than ten (10) days of suspension in a year is considered a change of placement. An examination of the reasons for the student's behavior is required, aka: a manifestation determination.
- Is the behavior a manifestation of the student's disability?
 - If so, an assessment must be done and a behavior plan created.
 - If not, student may continue to be disciplined just like students in general ed.
- Students may be suspended for up to an additional ten (10) days, as other students are, as long as the removals do not constitute a pattern.
- Beyond first 10 days, must provide educational services.

34 CFR § 300.530; also 20 US Code 1415 (k) states the same.

Special Considerations

- More than ten (10) days of suspension in a year may be considered a change of placement or constitute a pattern. (34 CFR § 300.536)
- Was the behavior caused by the disability or failure to implement the IEP?
 - If so, an assessment may need to be done and a behavior plan created.
 - If not, student may continue to be disciplined just like students in general ed.
- Students may be suspended for up to an additional ten (10) days, as other students are, as long as the removals do not constitute a pattern.
- Beyond first 10 days, must provide educational services.

34 CFR § 300.530; also 20 US Code 1415 (k) states the same.

Extreme Cases

May remove a student to an interim alternative educational setting for not more than 45 school days, without regard to manifestation, if offense includes:

- Inflicted serious bodily injury
- Weapons
- Or Drugs

34 CFR § 300.530

School Discipline Policy

- Why make it?
- Who makes it?
- What goes in it?
- When is it due?
- Who approves it?
- Who enforces it?
- Where does it go?

Why Make It?

The governing board of any school district shall prescribe rules...for the government and discipline of the schools under its jurisdiction.

Ed Code 35291

Who Makes It?

Each school shall solicit input from one representative selected by each of these groups:

1. Parents
2. Teachers
3. School administrators
4. School security personnel, if any
5. Pupils, if a JH or HS

Ed Code 35291.5 (a)

What Goes in It?

Rules not inconsistent with law or rules of the State Board of Ed.

Ed Code 35291

When is it Due?

On or before December 1, 1987 and at least every four years thereafter.

Ed Code 35291.5 (a)

Who approves it?

The principal, or his or her designee, and a representative *selected by classroom teachers employed at the school.*

Ed Code 35291.5 (a)

Who enforces it?

It's the duty of each employee to enforce the rules and procedures.

Ed Code 35291.5 (a)

Where does it go?

The governing board will notify the parent or guardian of the availability of rules pertaining to student discipline.

Ed Code 35291

At the beginning of the year, by:

- regular mail
- electronically
- or by any other method normally used to communicate in writing

Ed Code 48981

Parents

Anyone who willfully interferes with the discipline, good order, lawful conduct, or administration of any school class or activity of the school, with the intent to disrupt, obstruct, or to inflict damage to property or bodily injury upon any person, is guilty of a misdemeanor.

First conviction: fine between \$500 - \$1000 and/or county jail up to 1 year!

Ed Code 44810

The Law is on your side!

Any person, other than a registered student, who:

1. unlawfully fights or challenges another person to fight, or
2. maliciously and willfully disturbs another person by loud and unreasonable noise, or
3. uses offensive words which are inherently likely to provoke an immediate violent reaction,

is guilty of a misdemeanor.

Penal Code 415.5

Questions

The End