



Student & Special Education Discipline 101

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Legal Citation:
Ed. Code § 48900, subd. (s)

Jurisdiction to Suspend or Expel a Student

Before a school district may seek to expel or suspend a student, it must have jurisdiction over the student. The Education Code provides that a principal or superintendent has jurisdiction to discipline a student and therefore, may suspend or recommend for expulsion a student who commits a suspendable or expellable offense for acts that are related to a school activity or school attendance. In general, an act is related to a school activity or school attendance if the act is committed:

- While on any school grounds in California; or
- While going to or coming from school; or
- During the lunch period whether on or off campus; or
- During, or while going to or coming from, a school sponsored activity.

Legal Citations:

Ed. Code § 48900, subd. (a)-(r), (t)

Ed. Code § 48900.2

Ed. Code § 48900.3

Ed. Code § 48900.4

Ed. Code § 48900.7

Grounds for Suspension & Expulsion

Once the school district establishes jurisdiction to suspend or expel the student, the district must prove that the student committed a suspendable or expellable offense.

The following is a list of suspendable and expellable offenses as set forth in Education Code sections 48900, 48900.2, 48900.3, 48900.4 and 48900.7:

- Caused or attempted to cause or threatened to cause physical injury;
- Willfully used force;
- Possessed, sold or otherwise furnished weapons;
- Possessed, used, sold or otherwise arranged or negotiated to sell, or otherwise furnished or been under the influence of a controlled substance;
- Committed or attempted to commit robbery or extortion;
- Caused or attempted to cause property damage;
- Stole or attempted to steal school or private property;
- Possessed or used tobacco or products containing nicotine;
- Committed an obscene act or engaged in habitual profanity or vulgarity;
- Unlawfully possessed or unlawfully offered, arranged or negotiated to sell drug paraphernalia;
- Disrupted school activities or otherwise willfully defied valid authority;
- Received stolen property;
- Possessed an imitation firearm;
- Committed or attempted to commit sexual assault/sexual battery;
- Harassed, threatened or intimidated a student witness;
- Unlawfully offered, arranged to sell, negotiated to sell or sold Soma;
- Engaged in, or attempted to engage in hazing;
- Aided or abetted infliction of physical injury;
- Engaged in an act of bullying, including cyberbullying;
- Made terrorist threats;
- Committed sexual harassment;
- Caused, attempted to cause, threatened to cause, or participated in an act of hate violence; and
- Harassment of school district personnel or students.

Legal Citations:
Ed. Code § 48900, subd. (a)-(e)
Ed. Code § 48900.5

Comment:
A school may recommend
community service instead of
suspending a student. (Ed. Code §
48900.6)

Limitation on Suspension for First Offense

A school district may only suspend a student if other means of correction have failed to bring about proper conduct. Additionally, a student may only be suspended upon a first offense if: (a) the principal or superintendent determines that the student's presence causes a danger to persons; or (b) if the student committed any of the following violations under Education Code section 48900, subdivisions (a)-(e):

- Caused, attempted to cause, or threatened to cause physical injury to another person;
- Willfully used force or violence upon the person of another, except in self defense;
- Possessed, sold, or otherwise furnished a firearm, knife, explosive or other dangerous object;
- Unlawfully possessed, used, sold, or otherwise furnished, or been under the influence of a controlled substance;
- Unlawfully offered, arranged, or negotiated to sell a controlled substance, an alcoholic beverage or intoxicant of any kind to a person; or
- Attempted to commit robbery or extortion.

Legal Citation:
Ed. Code § 48900, subd. (k)

Limits Discipline for 'Willful Defiance' and 'Disruption'

Building on Assembly Bill 420 (2014), Governor Newsom signed SB 419 into law in fall 2019. SB 419 further limits school districts' ability to suspend students for willful defiance or disruption under Education Code, subdivision (k).

This bill eliminates suspensions for disruption and willful defiance for students in kindergarten to grade 8, with the ban for grades 6-8 sunseting in 2025. This limitation does not apply to a teacher's ability to suspend a student from their own classroom, which is authorized under Education Code section 48910. Already under AB 420, school districts no longer have the authority to recommend expulsion based upon disruption and willful defiance for any student regardless of grade level. These restrictions do not apply to suspensions or recommendations for expulsion based on other grounds, such as acts related to violence, controlled substances, bullying and vandalism.

"Mandatory"/"Discretionary" Suspension & Expulsion

Under the Education Code, the superintendent or principal must suspend and recommend for expulsion, and the governing board must expel, a student for any of the following acts committed at school or at a school activity off school grounds:

- Possessing, selling, or furnishing a firearm;
- Brandishing a knife at another person;
- Selling drugs;
- Committing or attempting to commit a sexual assault or committing sexual battery; or
- Possessing explosives.

The principal or superintendent must recommend a student for expulsion for any of the following acts committed at school, a school related activity or on school grounds, unless the principal or superintendent determines: (a) that expulsion should not be recommended under the circumstances; or (b) that an alternative means of correction would address the conduct:

- Causing serious physical injury (except in self defense);
- Possessing any knife or other dangerous object of no reasonable use to the student;
- Possessing drugs (except for first offense of possession of not more than one ounce of marijuana or possession of over-the-counter medication for use by the student for medical purposes or medication prescribed for the student by a physician);
- Robbery or extortion; or
- Assault or battery upon a school employee.

Legal Citation:
Ed. Code § 48915, subd. (c)

A principal or superintendent may recommend expulsion, and the governing board may expel, for the following offenses:

- Physical injury;
- Willful force;
- Weapons;
- Controlled substances;
- Robbery or extortion;
- Property damage;
- Theft;
- Tobacco use;
- Obscenity or profanity;
- Receiving stolen property;
- Drug paraphernalia;
- Imitation firearm;
- Sexual assault/battery;
- Harassment of a witness;
- Sale of Soma;

Legal Citation:
Ed. Code § 48915, subd. (a)(1)(A)-(E)

Legal Citation:
Ed. Code § 48915, subd. (b) & (e)

- Hazing;
- Aiding or abetting infliction of physical injury;
- Bullying;
- Sexual harassment;
- Hate violence;
- Harassment, threats or intimidation; or
- Terroristic threats against school officials, school property or both.

Note, again, violation of Education Code section 48900, subdivision (k), for defiance or disruption, is no longer a lawful basis upon which to recommend expulsion.

Informal Suspension Conference

Legal Citation:
Ed. Code § 48911

Except in an “emergency situation,” a suspension must be preceded by an informal conference between the student and principal, designee, or superintendent. An “emergency situation” is a situation which is determined to constitute a clear and present danger to the lives, safety, or health of students or school personnel.

At the conference the student must be informed of the reason that he/she is being suspended; the student must be informed of the evidence; and the student must be provided an opportunity to present his or her version of the facts and evidence in his/her defense. Additionally, both the student and parent must be notified of the student’s right to a conference, and the student’s right to return to school for the purpose of the conference.

The conference must be held within two schooldays unless it is waived by the student or the student is physically unable to attend. If the conference is not held within two schooldays because the student is physically unable to attend same (example: Student is in juvenile hall), then the conference must be held as soon as the student is physically able to return to school for the conference.

Suspension Notice Requirements

Legal Citation:
Ed. Code § 48911

Reasonable effort must be made to contact the student’s parent or guardian in person or by telephone to notify the parent or guardian that the student has been suspended. Notice must also be sent in writing to the parent or guardian. If the student is released to a peace officer, then the principal or school official must immediately notify the parent or guardian, unless otherwise instructed by law enforcement.

Time Limits on Suspension from School

A student may only be suspended for up to five schooldays at any one time.

Legal Citation:
Ed. Code § 48911, subd. (a)
Ed. Code § 48903

Additionally, a student cannot be suspended for more than twenty schooldays in a school year, or thirty schooldays if the student has for purposes of adjustment, enrolled or transferred to another regular school or class, opportunity class, or continuation education school or class.

Definitions—“Sexual Harassment”

Legal Citation:
Ed. Code § 212.5

“Sexual harassment” is defined as unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the educational setting under any of the following conditions:

- Submission to the conduct is explicitly or implicitly made a term or condition of an individual’s academic status, or progress.
- Submission to, or rejection of, the conduct by the individual is used as the basis of academic or other decisions affecting the individual.
- The conduct has the purpose or effect of having a negative impact upon the individual’s academic performance, or of creating an intimidating, hostile, or offensive educational environment.

Definitions—“Knife”

A “knife” is defined as any of the following:

Legal Citations:
Ed. Code § 48900, subd. (b)
Ed. Code § 48915, subd. (g)

- 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 ½ inches;
- A folding knife with a blade that locks into place; or
- A razor with an unguarded blade.

Discipline Timeline

Schoolday 1 of the Incident: Suspension

Legal Citations:
Ed. Code § 48911, subd. (a),
(b), (d) & (e)
Ed. Code § 48902

On schoolday one of the incident subjecting a student to discipline, the student’s misconduct should be discerned, investigated (including obtaining witness statements) and the principal or designee should determine which Education Code section(s) were violated. The principal or designee should hold an informal, pre-suspension conference with the student and whenever practicable, the teacher,

supervisor, or school employee making the referral. Police should be notified if the student commits an offense specified in Education Code section 48902. Finally, the principal or designee should determine whether or not to suspend the student, for not more than five schooldays.

**** Consider holding an MD**

If the principal or designee determines that the student should be suspended, then the principal or designee must prepare a written notice of suspension. The principal or designee should then call the parent or guardian to pick up the student and hand deliver the notice of suspension. If this is not feasible, the notice should be sent home with the student and should be deposited in the mail as well. Finally, the principal/designee should report the suspension, including the cause of suspension, to the superintendent or his/her designee.

Schoolday 5 of Suspension: Recommendation for Expulsion/Extension of Suspension

Legal Citation:
Ed. Code § 48911, subd. (g)

If applicable, by schoolday five of the suspension, the principal/designee should prepare and provide the District with the recommendation for expulsion. The superintendent/designee must inform the parent/guardian of the recommendation of expulsion, and must invite and meet with the student and parent/guardian regarding extending the suspension until the Governing Board has decided whether to expel the student. The request to participate in a meeting regarding the possible extension of a student's suspension pending expulsion, should be in writing.

**** Consider holding an MD**

After meeting with the student and the parent/guardian, the superintendent/designee must find that the student's presence at school or in an alternative school placement would cause a danger to persons or property or a threat of disrupting the instructional process, in order to extend the suspension. The superintendent/designee then provides written notice of this finding to the parent/guardian, and must inform the parent/guardian that the student is suspended until the Governing Board determines whether to expel the student. The parent or guardian should also be provided with a copy of the Recommendation for Expulsion.

At Least 10 Days Before the Expulsion Hearing: Expulsion Hearing Notice

Legal Citation:
Ed. Code § 48918, subd. (b)

The District Office must schedule the expulsion hearing, to be held within thirty schooldays of the site administrator's determination that the student committed an expellable offense. The notice must include the date and place of the hearing; a statement of the charges against the student; a copy of the District's disciplinary rules; a notice of the obligations of Education Code section 48915.1, subdivision (b); and, notice of the student's rights to be represented, obtain copies of all evidence, and question and present all witnesses and evidence. The District must prepare and send to the parent/guardian a notice of expulsion hearing. The notice must be sent at least ten calendar days prior to the scheduled expulsion hearing. Although not

required by statute, the District should prepare and send to the parent/guardian a copy of the District's evidence to be used at the expulsion hearing. The parent/guardian should receive the evidence two to three calendar days prior to the hearing date.

Schoolday 30 of Suspension: Expulsion Hearing

Legal Citation:
Ed. Code § 48918, subd. (a)(1)

The District must hold an expulsion hearing within thirty schooldays of the suspension, unless the student requests an extension (students are entitled to one extension not to exceed thirty calendar days).

Within 3 Calendar Days After Hearing: Recommendation for Expulsion if the Hearing is Conducted by an Administrative Panel

Legal Citation:
Ed. Code § 48918, subd. (e) & (f)

Within three calendar days of the hearing, the Administrative Hearing Panel ("Panel") that conducted the expulsion hearing must determine whether to recommend the expulsion of the student to the Governing Board. If the Administrative Panel recommends expulsion, findings of fact in support of the recommendation must be prepared and submitted to the Governing Board.

Schoolday 40 of Suspension: Governing Board Decision

Legal Citations:
Ed. Code § 48918, subd. (a)(2)
Ed. Code § 48918, subd. (j)

The Governing Board must issue a decision regarding whether the student will be expelled, within forty schooldays of the date the student was removed from his/her school of attendance, unless the student requests in writing that the decision be postponed. The Governing Board's action on an expulsion recommendation must be taken in open session.

Comment:
The notice should also contain a copy of the Governing Board's expulsion decision and order.

Written notice of the Board's decision to expel the student should be sent to the parent/guardian within ten schooldays of the conclusion of the hearing. The notice should include:

- Notice of the right to appeal the expulsion to the County Board of Education;
- Notice of the alternative educational placement to be provided to the student during the time of expulsion; and
- Notice of the obligation, of the parent/guardian or student, to inform any new school district of the expulsion

Special Education Discipline

Legal Citation:
34 C.F.R. § 300.536

The primary difference between disciplining special education students and disciplining regular education students is that the District must take action to ensure that it does not discipline special education students for actions that were caused by their disability, because such discipline would constitute disability discrimination.

Who is Protected by Special Education Laws?

Basis of Knowledge

Legal Citation:
34 C.F.R. § 300.534

Students who qualify for Section 504 services and accommodations are entitled to the same disciplinary protections as special education students (students with IEPs).

Additionally, special education student discipline protections also apply to students when, before the incident that gave rise to the discipline, the District had knowledge that the student was a child with a disability. “Knowledge” is defined narrowly, and only applies to the following circumstances:

- The parent expressed concern in writing to a teacher, or supervisory or administrative personnel of the District, that the child needs special education;
- The parent requested a special education assessment of the student; or
- The child’s teacher or other District personnel expressed to the special education director or other District supervisory personnel specific concerns about a pattern of behavior demonstrated by the child.

The District does not have “knowledge” of a student’s disability if any of the following apply:

- The parent refused to allow the District to assess the student;
- The parent refused special education services; or
- The District assessed the student and found that he or she did not qualify for special education.

If the District did not have “knowledge” as defined above before the disciplinary incident occurred, then the District may discipline the student like a regular education student, but must conduct an expedited special education assessment of the student. If the District had knowledge, then all special education student discipline protections apply to the student.

When Are Special Education Protections Triggered?

Special education student discipline protections apply whenever the District seeks to make a disciplinary change in a special education student’s placement.

Legal Citation:
34 C.F.R. § 300.530, subds. (b) & (c)

A “change in placement” occurs when:

- A “pattern of removals” in excess of ten (10) school days occurs;
OR
- A student is out on suspension pending expulsion.

Legal Citation:
34 C.F.R. § 300.530, subds. (b) & (c)

Accordingly, the District may suspend or otherwise remove students for up to 10 days per school year regardless of their disability, without conducting a manifestation determination or providing any special education services. However, once a student has “hit” 11 days of suspension, a manifestation determination must be held for each subsequent suspension.

Definition of “Suspension” for Purposes of Holding a Manifestation Determination

“On-campus” suspensions count towards your 10 days of suspension unless:

- The student continues to receive the services specified in his IEP;
- The student is able to appropriately participate in the general curriculum; and
- The student is able to participate with nondisabled children to the same degree he could before suspension.

Note, bus suspensions count as a “day” of suspension for special education students, if their IEP calls for transportation as a related service.

What are the Special Protections That Apply to Special Education Students?

Legal Citation:
34 C.F.R. § 300.530

Manifestation Determinations

The key component of special education student discipline protection is the manifestation determination. A manifestation determination meeting must be held within 10 school days of a decision to make a disciplinary change in placement, i.e., the decision to remove a student from his or her placement for a total of more than 10 school days in one school year. For example, if a student has 7 days of suspension in one school year, and on January 10, the District decides to suspend the student for 5 more days, the manifestation determination must be held within 10 school days of January 10.

The manifestation determination meeting must be attended by at least one parent and “relevant members of the child’s IEP team (as determined by the parent and the [District]).” However, it is often wise to have the entire IEP team attend a manifestation determination.

The purpose of the manifestation determination is to determine the relationship between the student’s disability and the behavior that led to the discipline. Accordingly, the manifestation team must determine whether the student’s behavior that led to the discipline was:

- Caused by, or had a direct and substantial relationship to, the child's disability; or
- The direct result of the District's failure to implement the IEP.

Note that parents do not have to agree with the outcome/determination of the manifestation determination meeting.

If the answer to both questions is no, then the behavior is not a manifestation of the student's disability, and the District can discipline the student in the same manner as regular education students, except that the District must continue to provide services to enable the student to participate in the general education curriculum and progress towards meeting goals. Additionally, to the extent appropriate for the particular student, the District must conduct a behavioral assessment and offer behavioral interventions designed to address the behavior so that it does not recur.

If the answer to either question is yes, then the behavior is a manifestation of the student's disability, and the student generally cannot be further disciplined. The student must be returned to the placement from which he or she was removed, unless the parent and District agree to a change in placement through the IEP process, or the District places the student in a special circumstances interim alternative educational setting, as described below. Additionally, the District must conduct a behavioral assessment and develop a behavioral intervention plan to address the behavior, unless the student already has one. Finally, if the team finds that the IEP was not implemented, the District must take immediate steps to remedy the situation.

In sum, if the behavior is not a manifestation of the student's disability, then the student can generally be disciplined like a regular education student. If the behavior is a manifestation, then the discipline must cease, and the student generally cannot be moved from his or her previous placement except through the IEP process.

Day 11 Services

The student's IEP team shall determine and provide the appropriate educational services on the "11th" day of removal/suspension, to the extent necessary, to:

- Enable the student to appropriately progress in the general curriculum; and
- Continue to receive those services and modifications, including those described in the student's current IEP, that will enable the student to meet the goals with that IEP, and to address the student's behavior violation so that it does not recur.

Special Circumstances Interim Alternative Educational Settings

There are a few situations in which a special education student's placement may be changed even if the behavior is a manifestation of the student's disability and the

Note:

“Weapon” is defined as “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 2.5 inches in length.” (18 USC 930 (g)(2).)

“Controlled substance” means a drug or other substance identified under schedules I, II, III, IV, or V in Section 202(c) of the Controlled Substances Act (21 USC 812 (c)). (34 CFR 300.530 (i)(1).)

“Illegal drug” means a controlled substance, but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health care professional, or that is legally possessed or used under any other authority under that Act or under any other provision of federal law. (34 CFR 300.530 (i)(2).)

“Serious bodily injury” is defined as bodily injury that involves a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty. (18 USC 1365 (h)(3); 71 Fed. Reg. 46,722 (2006).)

parent does not consent to a change in placement. A student may be moved to an alternative placement for up to 45 school days if the student does any of the following:

- Possesses a weapon at school or a school function;
- Possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance at school or a school function; or
- Has inflicted serious bodily injury upon another person while at school or a school function.

Each of these categories is narrowly and specifically defined. Additionally, use of an interim alternative educational setting may lead to a legal challenge. Accordingly, we recommend using interim settings sparingly, and recommend consultation with legal counsel before using an interim setting.

That being said, interim alternative educational settings offer the District an option when a student commits a serious offense that is the result of a student’s disability and the parent will not consent to a change in placement. Such placements should generally be considered akin to restraining orders against a student, and should only be pursued in very unusual circumstances.

Manifestation Determination for Each Disciplinary Removal

A manifestation determination must be held for each disciplinary removal after the initial 10 suspension days. For example, if the student has been suspended for 12 days during the school year, and a manifestation determination was previously held after the 10th day of suspension, and the District subsequently decides to suspend the student for one or more days, then the District will need to convene another manifestation determination meeting within 10 days after the decision to suspend for the additional day(s). The reason for these repeated manifestation determinations is that students may engage in a variety of inappropriate behaviors, some of which might be manifestations, and some of which might not be. Just because one behavioral incident was a manifestation of the student’s disability does not mean that the next incident will also be a manifestation.

Preparing for & Presenting an Expulsion Case at Hearing

Making the Case for Expulsion

First, identify the pertinent grounds for the expulsion. Also, determine if overlapping or alternative theories for expulsion are permissible. Next, list the elements of each offense. Then, identify percipient witnesses, physical and documentary evidence which prove each element. Finally, prepare the questions you will use to examine witnesses and the foundation for introducing physical and documentary evidence.

Legal Citations:

Evid. Code § 200 et seq.

Evid. Code § 1100 et seq.

Ed. Code § 48918, subd. (h)

Documentation & Investigation

Investigations of student misconduct should be conducted as swiftly as possible. Site administrators may conduct an investigation at the same time as the police. Additionally, the school site should not stop investigating an act of student misconduct if the police are involved. If the student admits to the misconduct, then the investigation will most likely be less comprehensive.

Identifying the Charges & Evidence in the Record

A principal's restatement of the pertinent facts and summary of the events that occurred is insufficient to uphold a decision to expel without evidentiary support. Findings of the Governing Board cannot be based solely on hearsay. Thus, the principal must present both hearsay and non-hearsay evidence to support a finding that a student should be expelled.

Hearsay Basics

Hearsay is evidence of a statement, made other than by a witness testifying at the hearing, when offered to prove the truth of the matter asserted. A written statement or document is hearsay. For example, if the principal testifies "Jim told me that he saw the student carrying a knife on campus," because Jim is not the one testifying, this is hearsay.

While hearsay evidence is admissible, non-hearsay evidence must also be presented to support an expulsion. If in doubt, and no other evidence supports the potential expulsion, get the person who actually made the statement to testify.

There are exceptions to the hearsay rule. The following is a list of hearsay exceptions, which although constitute hearsay, are not considered to be "hearsay":

- Admissions by a party (for example, the accused);
- "Excited utterance";
- Declaration against interest (if the witness is not available);
- Prior inconsistent statements;
- Mental or physical state;
- Past recollection recorded when the witness does not have a present recollection of the events;
- Official records; and/or
- Statements regarding then existing state of mind or physical condition.

Legal Citation:
Evid. Code §§ 1200 et seq.

“Fear” or “Sheltered Witness” Declarations

Legal Citation:
Ed. Code § 48918, subd. (f)(2)

Student declarations can be submitted as non-hearsay evidence if intimidation keeps them from being present at the hearing. However, before a fear declaration can be submitted, a foundation must be laid for the student’s fear under oath. The declaration must have the student’s name and any other identifiable information redacted for use at the hearing.

If a fear declaration is presented into evidence instead of the student being present, then it is necessary to present evidence that the student witness’ fear of suffering psychological or physical harm is reasonable. To do this, the Board/Panel must make a finding that the disclosure of the identity of the witness or the testimony of the witness at the hearing would subject the witness to an unreasonable risk of physical or psychological harm.

Subpoena Power

Legal Citation:
Ed. Code § 48918, subd. (i)(1)

The Governing Board or its designee may issue subpoenas at the request of either the superintendent/designee or the student for the personal appearance of percipient witnesses at the hearing. A school principal may also wish to request the Governing Board to issue subpoenas for witnesses who are not cooperating.

Who Should Testify & What Documents May be Used

Adult witnesses, student witnesses, school resource officers, the administrator presenting the case, and any other person who has knowledge of the expellable offense(s) may testify. The student’s cumulative file, a witness statement if the witness is not testifying, police reports, and fear declarations may be submitted into evidence.

Opening & Closing Statements and Cross- Examination

You should draft an opening statement before the hearing. The opening statement should present your “theory of the case,” and should include an overview of the charges, a brief overview of the facts, and the evidence you plan to admit which will support the charges. Remember, your opening statement is not evidence.

Cross examination of witnesses is allowed. However, be careful not to “beat a dead horse.” Also, create a trail of bread crumbs leading to your conclusion by asking the witness specific questions.

Closing statements should be outlined in advance. The statement should also include evidence and a discussion of events that occurred during the hearing. Finally,

don't forget to make an argument in your closing statement which supports the fact that the student presents a continuing danger or that other means of correction are not feasible or have repeatedly failed to bring about proper conduct (also called "secondary findings").

District Witnesses-What to Ask

The first thing to ask a witness who works for the District is his/her name, current assignment, duties, length of time in the position, length of time with the District, and what other positions (if any) that the witness has held. You should also ask questions about the witness's history in student management/discipline. The witness should be asked questions regarding his/her involvement in student discipline matters as a part of his/her professional responsibilities.

The District witnesses should be asked questions about their involvement in the incident, the nature of the incident, when they first learned of the incident, what observations, if any they had, as well as any other general questions regarding the investigation. The witness should be asked specific questions regarding the investigation, including who conducted the investigation, who was interviewed, when and where the interviews took place, who was present, the student's reaction and demeanor, as well as whether other students were interviewed. To support the secondary findings, the witness should also be asked whether other means of correction, other than expulsion, were feasible or would bring about proper conduct, as well as the reasons why. Additionally, the witnesses should be asked whether in their opinion, the student's presence at school would cause a continuing danger to his/her own physical safety or the physical safety of others, as well as the reasons why.

Legal Citation:
Ed. Code § 48918, subd. (f) & (h)

Evidentiary Standards, Rules & Objections

The evidence set forth during the hearing must prove by a preponderance of the evidence that the student committed the expellable offenses. "Preponderance of the evidence" means that there is more than a 50% chance that the student committed the alleged acts.

Evidence used during the hearing can be direct and/or circumstantial. Additionally, technical rules of evidence do not apply. Therefore, do not let the other attorney/parent bully you with objections. Also, as discussed above, hearsay evidence is admissible, but it cannot be the only evidence to support the Education Code violations. Finally, you should admit and rely upon evidence that reasonable people rely upon in the conduct of serious affairs.

For all expulsion recommendations, except for those charges under Education Code

Legal Citation:
Ed. Code § 48918, subd. (c)(3) &
(h)(2)

section 48915, subdivision (c), the principal/designee must present evidence of secondary findings, which must prove by substantial evidence that other means of correction are not feasible or have repeatedly failed to bring about proper conduct; or, due to the nature of the violation, the presence of the student causes a continuing danger to the physical safety of the student or others.

Substantial evidence means that the evidence must be of ponderable legal significance and must be reasonable in nature and credible and of solid value.

Special Procedures for Cases of Sexual Assault or Battery

A complaining witness must be given five calendar days' notice prior to being called to testify and may be entitled to have up to two adult support persons present during his or her testimony. The person conducting the hearing may also permit one of the complaining witness's support persons to accompany him/her to the witness stand. The complaining witness must also be given the right to have his/her testimony heard in a closed session. Evidence regarding specific instances of a complaining witness's prior sexual conduct is presumed to be inadmissible. Additionally, the complaining witness and the accused will be advised immediately after any allegation is made to refrain from personal or telephone contact with each other during the pendency of an expulsion process. Finally, the complaining witness must be provided with a copy of the applicable disciplinary rules and advised of his/her rights.

Legal Citation:
Ed. Code § 48915, subd. (b) & (e)

The expulsion hearing may be postponed for one schoolday in order to accommodate the special physical, mental or emotional needs of a student who is the complaining witness. The District must provide a non-threatening environment for the complaining witness, which must include a separate room from the hearing room that the witness may use prior to and during breaks in testimony. At the discretion of the person conducting the hearing, the complaining witness must be allowed a reasonable period of relief from examination and cross-examination during which he/she may leave the hearing room.

Secondary Findings

For all expulsion recommendations, except for those charges under Education Code section 48915, subdivision (c), secondary findings must be made. Secondary findings are findings which prove, by substantial evidence, that:

- Other means of correction are not feasible or have repeatedly failed to bring about proper conduct; or
- That due to the nature of the violation, the presence of the student causes a continuing danger to the physical safety of the student or others.

The determination as to whether there is enough evidence to support the existence of secondary findings is made by the site administrator when determining whether to recommend expulsion; by the administrative panel following the expulsion hearing; and by the Governing Board when deciding whether to accept the Panel's recommendation to expel the student.

When determining whether secondary findings exist, the following evidence should be presented:

- Prior disciplinary history;
- Does the student “get it?”;
- Is the student contrite?;
- Is the student's conduct such that s/he is a continuing danger?;
- How was the nature of the conduct dangerous?;
- What is the impact on the victim's safety and education?; and
- Gang affiliation?

Student Expulsion Top 10

- If possible, use live testimony. Don't over-rely on hearsay.
- Be conscious of student safety issues when asking students to testify.
- Certain student declarations may not be hearsay.
- Prepare your questions and witnesses.
- Know the elements of the charges you need to prove.
- Don't “over-object” to the student's evidence, particularly if the student is not represented by counsel.
- Preserve the record: Bring a court reporter?
- “Zero Tolerance” is a dirty word.
- When should a student's declaration be redacted?
- Never forget about secondary findings.

Rehabilitation Plans

The Governing Board must recommend a plan of rehabilitation for the student at the time of the expulsion order. Examples of rehabilitation plans/conditions for suspended expulsion orders include:

- Improved academic performance;
- Counseling;
- Drug/alcohol education/counseling;
- Community service;
- Attendance contract;
- Periodic review of progress by superintendent;
- Will not be truant pursuant to the Education Code; and/or
- Will not violate school policies, rules, or Education Code provisions that would merit an out-of-school suspension or expulsion.