

# SUSPENSIONS

*Presentation by Alan B. Harris  
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## I. SUSPENSION FROM CLASS BY A TEACHER

A teacher may suspend a pupil from class for any conduct prohibited by Education Code section 48900. The maximum duration is the remainder of the class period plus the following day. (Section 48910.)

Following the suspension, the teacher must immediately report the event to the principal:

- | The pupil must be sent to the principal for additional, appropriate action;
- | As soon as possible, the teacher must arrange for and ask the parents to attend a conference regarding the suspension;
- | At the parent-teacher conference, if practicable, a school counselor or school psychologist may attend;
- | An administrator must attend the parent-teacher conference if so requested by parents.

## II. SUSPENSION FROM SCHOOL BY THE PRINCIPAL

A school principal (or the principal's duly assigned designee or the superintendent) may suspend a pupil from school for any conduct prohibited by Section 48900. The maximum duration of any single suspension is five school days. (Section 48911.)

### A. Definition of Suspension

Suspension means the removal of a pupil from ongoing instruction for adjustment purposes.

Suspension does not mean:

- | Reassignment to another education program or class at the same school;
- | Referral to a certificated employee to be counseled;

- | Removal from the class, without reassignment to another class or program, for the remainder of the class period (which may not occur more than once every five school days for any particular class). (Section 48925(d).)

B. Limitations on the Principal's Authority to Suspend

Prohibited conduct must be related to school activity or attendance. (Section 48900(s).) Suspension may be imposed only when alternative means of correction have failed to bring about proper conduct. Those other means should be documented and may include conferences; referrals to a school counselor, social worker etc.; study teams; psychosocial assessment; pro-social behavior programs; restorative justice programs; campus wide positive behavior support with tiered interventions; after school behavior programs; community service. (Section 48900.5.)

C. Designees

The principal may designate another school site administrator as his or her designee for pupil disciplinary purposes. If no other administrators are assigned to the school site, a Certificated staff member may be assigned. Only one person at a time may be the principal's primary designee. An alternate may be assigned as well. The assignments must be in writing.

D. The Total Number of Days of Suspension During the School Year is Limited

A school district may suspend a student for a maximum of 20 days during any school year.

If the pupil has enrolled in or is transferred to another regular school, an opportunity school/class or a continuation school for adjustment purposes, the maximum number of days of suspension is 30 school days during any school year. (Section 48903.)

This cap on the total number of days of suspension does not apply to circumstances where a student is being processed for expulsion. (Section 48911(g).)

A child with a disability under IDEA can only be suspended for a total of 10 school days. (20 USC section 1415(k).)

E. The Principal's Authority to Suspend for a First Offense Is Conditional

A pupil may be suspended for the first offense only if:

1. The offense is a violation of Section 48900(a)–(e):
  - ▶ Caused, attempted to cause, threatened to cause physical injury;
  - ▶ Willfully used force or violence;

- ▶ Possessed, sold or furnished a firearm, knife, explosives, or a dangerous object;
  - ▶ Possessed, used, sold, furnished or under the influence of a either a controlled substance / alcohol or other intoxicant;
  - ▶ Offered, arranged, negotiated the sale of a controlled substance;
  - ▶ Caused or attempted to cause the offense of robbery or extortion.
2. Or any other misconduct if the pupil's presence causes a danger to persons.

F. *Goss v. Lopez* (1975) 419 U.S. 565 and Due Process

In Ohio, students were suspended for 10 days without a prior hearing. Students have a liberty interest in a free public education which is protected by the United States Constitution. That interest cannot be taken away by suspension without the minimal procedural safeguards of notice and an opportunity to be heard. Rudimentary due process is required to ensure fairness in disciplinary truth-seeking determinations. The process must include:

1. Oral or written notice of the charges;
2. An explanation of the evidence; and
3. An opportunity to present the student's side of the story.

G. Due Process Requirements Imposed by Education Code Section 48911

*Pre-Suspension Conference Required:*

1. Principal must conduct an informal pre-suspension conference between the student and, if practical, school staff who referred pupil for disciplinary action.
2. At the conference, the pupil must be informed of the charges and evidence and given an opportunity to defend himself/herself.
3. A reasonable effort must be made to notify parents of the conference by telephone. Parents are required to respond without delay.
4. If the student is actually suspended, the parents must be notified in writing.
5. No pre-suspension conference is required if an emergency situation exists. An emergency situation is defined as one which presents a clear and present danger to the life, safety, or health of pupils or school personnel. Nevertheless, parents must be notified and the conference held within two school days.

## H. Other Means of Correction are Preferred

By legislation effective January 1, 2013 (AB 1729), the Legislature has emphasized the importance of employing alternative means of correction before imposing suspension from school or suspension to a supervised classroom. With AB 1729, the Legislature is seeking to promote the use of non-punitive classroom discipline, in-school discipline strategies and other effective interventions designed to help an offending student change his/her problematic behavior.

Suspension ought not to be imposed for misconduct, other than a violation of Sections 48900 (a)-(e), unless a good deal of non-punitive and in-school discipline strategies have been directed to the pupil's problematic behavior. The effort must be documented.

Statutorily recommended alternative means of correction lieu of suspension are:

- | Conference between school personnel, the pupil's parent or guardian and the pupil.
- | Referral to school counselor, psychologist, social worker, child welfare attendance personnel or other school support service personnel for counseling.
- | Intervention related teams such as a student study team to develop and implement individualize behavior plans in partnership with the student and his/her parents.
- | Psycho-educational assessment for special education eligibility and services.
- | School wide positive behavior support program.
- | Community service programs such as outdoor beautification, campus betterment or youth assistance programs.
- | Anger management programs, drug and alcohol abuse programs or other programs that teach pro-social behavior.
- | Participation in a restorative justice program.
- | After school programs designed to address specific behavior issues and expose problematic students to positive activities and behavior including those in collaboration with community groups.

(Sections 48900.5 and 48900.6)

## I. Review by Superintendent

Parents may meet with the superintendent to challenge the suspension or to discuss the school policy or other issues pertinent to the disciplinary action. (Sections 48911(g) and 48912.)

## J. Instruction of Pupils Who Have Been Suspended

Pupils may be required to complete assignments and tests missed during suspension. (Section 48913.)

Pupils may be assigned to a supervised suspension classroom at a separate classroom building or site. (Section 48911.1.)

Special rules apply for pupils with IEPs.

## K. Suspension to a Supervised Classroom

A pupil suspended from school may be assigned to a supervised classroom if the pupil:

1. Does not pose an imminent danger to other pupils or staff;
2. Does not pose a "threat to the campus"; and
3. If an expulsion has not been initiated.

(Section 48911.1.)

## L. Recording the Suspension in the Pupil's Records

The school district is required to record any suspension and the underlying offense(s) in the official records of the pupil. (Section 48900.8.)

## III. EXTENSION OF THE INITIAL PERIOD OF SUSPENSION BY THE SUPERINTENDENT

### A. Extension of Suspension Pending Completion of the Expulsion Process

The superintendent or designee may extend the suspension until the governing board has rendered its decision following an expulsion recommendation. (Section 48911(g).)

Suspension may be extended only if the presence of the pupil at the school or an alternative school placement would either:

1. Cause a danger to persons or property; or
2. Cause a threat of disrupting the instructional process

The 20/30 day cap on the total days of suspension does not apply when a suspension is duly extended pending resolution of the expulsion process. (Section 48911(g).)

Children with a disability pursuant to IDEA may not be suspended for more than 10 school days, unless the pupil's misconduct is NOT a manifestation of his/her disability.

B. Due Process Associated with Extension of the Suspension

Conduct a meeting to determine if an extended suspension is appropriate. Parents must be invited to attend this meeting.

C. Special Rules for Foster Children

A foster child means either a child who:

1. Has been removed from his/her home pursuant to Section 309 of the Welfare and Institutions Code;
2. Is the subject of a petition filed under Sections 300 or 602 of the Welfare and Institutions Code; or
3. Has been removed from his/her home and is the subject of a petition filed under Sections 300 or 602 of the Welfare and Institutions Code.

If the pupil is a foster child, the pupil's attorney and a representative of the county child welfare agency shall be invited to such meeting.

IV. SUSPENSION FROM SCHOOL BY THE GOVERNING BOARD

The governing board may also suspend a pupil from school for any conduct prohibited by Section 48900. The length of the suspension may be for any number of school days, but the total may not exceed 20 days during any school year.

If the pupil has enrolled in or is transferred to another regular school, an opportunity school/class or a continuation school for adjustment purposes, the total may not exceed 30 days during any school year. (Section 48912.)

A. Due Process and Brown Act Requirements Imposed by Section 48912

The hearing must be conducted in closed session unless the pupil requests a public session.

The hearing must be agendized as a closed session.

The pupil and parents must be sent written notification of the intent of the board to hold a closed session by registered mail or personal service.

## B. Suspension from Continuation School by the Governing Board

The governing board may suspend a pupil enrolled in a continuation school or class for the remainder of the semester. (Section 48912.5.)

The 20/30 day cap on the total days of suspension does not apply and the initial suspension may be extended until the governing board determines whether or not to suspend the pupil for the remainder of the semester. (Section 48912.)

## V. SUSPENSION OF A CHILD WHO IS ELIGIBLE FOR IDEA/ SPECIAL EDUCATION SERVICES — THE BASICS

Federal law governs the authority of school districts to suspend disabled children from school. Disabled children are those eligible to receive special education and related services pursuant to the Individuals with Disabilities Act – 20 USC section 1400, et seq. and 34 CFR 300 (IDEA). Suspension from school beyond 10 days may be a unilateral change in placement and create a denial of FAPE claimed against the district. A unilateral change in placement may also create a civil damages claim, pursuant to Section 1983, against both the district and the responsible school official. Many of the rules which apply in the case of a child eligible for special education under IDEA also apply to a child who is eligible under Section 504 of the Rehabilitation Act of 1973.

### A. Total Days of Suspension if the Misconduct is a Manifestation of the Child's Disability

School personnel have the authority to suspend from school, disabled children, who have committed misconduct, to the same extent as a children without disabilities, but not for more than 10 school days. (Section 48915.5 and 20 USC section 1415(k)(1)(B).)

If transportation is specified in an IDEA eligible child's IEP and that child is suspended from bus transportation, then the child must be provided with an alternative form of transportation and at no cost to the pupil or his/her parents. (Section 48915.5.)

If the misconduct is a manifestation of the pupil's disability, after 10 days of suspension, the pupil must be returned to the pre-suspension placement unless the IEP team recommends otherwise and the parents have agreed in writing. (20 USC section 1415(k)(1)(B).)

Note that generally both special education and regular education students cannot be suspended from school for more than five consecutive school days. (Section 48903.)

### B. Total Days of Suspension if the Misconduct is NOT a Manifestation of the Child's Disability

If the misconduct is not a manifestation of the child's disability, the initial suspension may be extended pending the completion of the expulsion process. However, after 10 days of

suspension from school, the school district must provide educational services necessary to enable the child to continue to participate in the general education curriculum, although in another setting.

The educational services must be calculated to enable the child to progress toward meeting the goals set out in the child's IEP.

In addition, if appropriate, the child must be offered a Functional Behavior Assessment (FBA) and an Behavior Support Plan (BSP) must be developed, or if one already exists, then it may be modified. The purpose of this requirement is to address the behavior violation so it does not reoccur. (20 USC section 1415(k)(1)(D).)

C. Special Circumstances Removal to a 45-Day Interim Alternative Educational Placement Regardless of Whether or Not the Misconduct is a Manifestation of the Child's Disability.

A school official may unilaterally, pursuant to an IEP team decision, remove a disabled child to an interim alternative placement for up to 45 school days regardless of whether or not the misconduct is a manifestation of the disability or whether the parents agree with the new placement if, while at school or at a school function, the child commits the following misconduct:

1. Carries or possesses a weapon to or at school, on school premises, or to or at a school function;
2. Knowingly possesses or uses illegal drugs, while at school, on school premises, or at a school function;
3. Knowingly sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function; or
4. Inflicts serious bodily injury upon another person while at school, on school premises, or at a school function.

The interim alternative placement must be determined by the child's IEP team. (20 USC section 1415(k)(1)(G).)

D. Definition of a Dangerous Weapon

A 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 the term does not include a pocketknife with a blade less than 2½ inches in length. (18 USC section 930(g)(2).)

E. Definition of an Illegal Drug

A controlled substance is a drug or other substance identified under Schedules I - V of 21 USC section 812(c). Marijuana is a Schedule I drug —

- | Except if legally possessed or used under the care of a physician.

F. Definition of Serious Bodily Injury

Serious bodily injury means bodily injury which 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 section 1365)

A bodily injury is:

- | Cut, abrasion, bruise, burn, or disfigurement;
- | Physical pain;
- | Illness;
- | Impairment of the function of a bodily member, organ, or mental faculty; or
- | Any other injury to the body, no matter how temporary.