

# MODESTO CITY SCHOOLS

## Board Policy

BP 5144.1

### STUDENTS

#### Suspension and Expulsion/Due Process

The Governing Board desires to provide District students access to educational opportunities in an orderly school environment that protects their safety and security, ensures their welfare and well-being, and promotes their learning and development. The Board shall develop rules and regulations setting the standards of behavior expected of District students and the disciplinary processes and procedures for addressing violations of those standards, including suspension and/or expulsion.

The grounds for suspension and expulsion and the procedures for considering, recommending, and/or implementing suspension and expulsion shall be only those specified in law, in this policy, and in the accompanying administrative regulation.

Except when otherwise permitted by law, a student may be suspended or expelled only when the behavior is related to a school activity or school attendance occurring within any District school or another school District, regardless of when it occurs, including, but not limited to, the following: (Education Code 48900(s))

1. While on school grounds
2. While going to or coming from school
3. During the lunch period, whether on or off the school campus
4. During, going to, or coming from a school-sponsored activity

District staff shall enforce the rules concerning suspension and expulsion of students fairly, consistently, equally, and in accordance with the District's nondiscrimination policies.

#### Appropriate Use of Suspension Authority

Except when a student's act violates Education Code 48900(a)-(e), as listed in items #1-5 under "Grounds for Suspension and Expulsion: Grades K-12" of the accompanying administrative regulation, or when the student's presence causes a danger to others, suspension shall be used only when other means of

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correction have failed to bring about proper conduct. (Education Code 48900.5, 48900.6)

A student's parents/guardians shall be notified as soon as possible when there is an escalating pattern of misbehavior that could lead to on-campus or off-campus suspension.

No student in grades K-8 may be suspended for disruption or willful defiance, except by a teacher pursuant to Education Code 48910. (Education Code 48900)

Students shall not be suspended or expelled for truancy, tardiness, or absenteeism from assigned school activities.

### **On-Campus Suspension**

To ensure the proper supervision and ongoing learning of students who are suspended for any of the reasons enumerated in Education Code 48900 and 48900.2, but who pose no imminent danger or threat to anyone at school and for whom expulsion proceedings have not been initiated, the Superintendent or designee shall establish a supervised suspension classroom program which meets the requirements of law.

Except where a supervised suspension is permitted by law for a student's first offense, supervised suspension shall be imposed only when other means of correction have failed to bring about proper conduct. (Education Code 48900.5)

When there is an on-campus suspension, the parent/guardian will be notified as soon as possible, but within a 24 hour time period.

### **Authority to Expel**

A student may be expelled only by the Board. (Education Code 48918(j))

As required by law, the Superintendent or principal shall recommend expulsion and the Board shall expel any student found to have committed any of the following "mandatory recommendation and mandatory expulsion" acts at school or at a school activity off school grounds: (Education Code 48915)

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1. Possessing a firearm which is not an imitation firearm, as verified by a certificated employee, unless the student had obtained prior written permission to possess the item from a certificated school employee, with the principal or designee's concurrence
2. Selling or otherwise furnishing a firearm
3. Brandishing a knife at another person
4. Unlawfully selling a controlled substance listed in Health and Safety Code 11053-11058
5. Committing or attempting to commit a sexual assault as defined in Penal Code 261, 266c, 286, 288, 289, or former 288a, or committing a sexual battery as defined in Penal Code 243.4
6. Possessing an explosive as defined in 18 USC 921

For all other violations listed in the accompanying administrative regulation, the Superintendent or principal shall have the discretion to recommend expulsion of a student. If expulsion is recommended, the Board shall order the student expelled only if it makes a finding of either or both of the following: (Education Code 48915(b) and (e))

1. That other means of correction is not feasible or have repeatedly failed to bring about proper conduct
2. 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

A vote to expel a student shall be taken in an open session of a Board meeting.

The Board may vote to suspend the enforcement of the expulsion order pursuant to the requirements of law and the accompanying administrative regulation. (Education Code 48917)

No student shall be expelled for disruption or willful defiance. (Education Code 48900)

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No child enrolled in a preschool program shall be expelled except under limited circumstances as specified in AR 5148.3 - Preschool/Early Childhood Education.

#### **Due Process**

The Board shall provide for the fair and equitable treatment of students facing suspension and/or expulsion by affording them their due process rights under the law. The Superintendent or designee shall comply with procedures for notices, hearings, and appeals as specified in law and administrative regulation. (Education Code 48911, 48915, 48915.5, 48918)

#### **Maintenance and Monitoring of Outcome Data**

The Superintendent or designee shall maintain outcome data related to student suspensions and expulsions in accordance with Education Code 48900.8 and 48916.1, including, but not limited to, the number of students recommended for expulsion, the grounds for each recommended expulsion, the actions taken by the Board, the types of referral made after each expulsion, and the disposition of the students after the expulsion period. For any expulsion that involves the possession of a firearm, such data shall include the name of the school and the type of firearm involved, as required pursuant to 20 USC 7961. Suspension and expulsion data shall be reported to the Board annually and to the California Department of Education when so required.

In presenting the report to the Board, the Superintendent or designee shall disaggregate data on suspensions and expulsions by school and by numerically significant student subgroups, including, but not limited to, ethnic subgroups, socioeconomically disadvantaged students, English learners, students with disabilities, foster youth, and students in a transitional living situation. Based on the data, the Board shall address any identified disparities in the imposition of student discipline and shall determine whether and how the District is meeting its goals for improving school climate as specified in its local control and accountability plan.

*Legal Reference:*

**EDUCATION CODE**

*212.5 Sexual harassment*

*233 Hate violence*

*1981-1981.5 1983 Enrollment of students in community school*

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*Legal Reference (cont.):*

*8239.1 Prohibition against expulsion of preschool student*

*17292.5 Program for expelled students*

*32261 32260-32262 Interagency School Safety Demonstration Act of 1985*

*35145 Open board meetings*

*35146 Closed sessions (regarding suspensions)*

*35291 Rules (for government and discipline of schools)*

*35291.5 Rules and procedures on school discipline 48645.5*

*Readmission; contact with juvenile justice system 48660-*

*48666 Community day schools*

*48853-48853.5 Foster youth*

*48900-48927 Suspension and expulsion*

*48950 Speech and other communication*

*48980 Parental notifications*

*49073-49079 Privacy of student records*

*52052 Numerically significant student subgroups*

*52060-52077 Local control and accountability plan*

*64000-64001 Consolidated application*

*8489-8489.1 Prohibition against expulsion of preschool student*

#### **CIVIL CODE**

*47 Privileged communication*

*48.8 Defamation liability*

#### **CODE OF CIVIL PROCEDURE**

*1985-1997 Subpoenas; means of production*

#### **GOVERNMENT CODE**

*11455.20 Contempt*

*54950-54963 Ralph M. Brown Act*

#### **HEALTH AND SAFETY CODE**

*11014.5 Drug paraphernalia*

*11053-11058 11059 Standards and schedules/Controlled substances and schedules*

#### **LABOR CODE**

*230.7 Employee time off to appear in school on behalf of a child*

#### **PENAL CODE**

*31 Principal of a crime, defined*

*240 Assault defined*

*241.2 Assault fines*

*242 Battery defined*

*243.2 Battery on school property*

*243.4 Sexual battery*

*245 Assault with deadly weapon*

*245.6 Hazing*

*261 Rape defined*

*266c Unlawful sexual intercourse*

*286 Sodomy defined*

*287 Oral Copulation*

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*Legal Reference (cont.):*

288 *Lewd or lascivious acts with child under age 14*

289 *Penetration of genital or anal openings*

417.27 *Laser pointers*

422.55 *Hate crime defined*

422.6 *Interference with exercise of civil rights*

422.7 *Aggravating factors for punishment*

422.75 *Enhanced penalties for hate crimes*

626.2 *Entry upon campus after written notice of suspension or dismissal without permission*

626.9 *Gun-Free School Zone Act of 1995*

626.10 *Dirks, daggers, knives, razors, or stun guns*

868.5 *Supporting person; attendance during testimony of witness*

### **WELFARE AND INSTITUTIONS CODE**

224.1 *Indian child; definition*

729.6 *Counseling*

### **UNITED STATES CODE, TITLE 18**

921 *Definitions, firearm*

### **UNITED STATES CODE, TITLE 20**

1415(K) *Placement in alternative educational setting*

7961 *Gun-free schools*

### **UNITED STATES CODE, TITLE 42**

11432 11435-11435 *Education of homeless children and youths*

*Management Resources:*

### **COURT DECISIONS**

*T.H. v. San Diego Unified School District (2004) 122 Cal. App. 4th 1267*

*Woodbury v. Dempsey (2003) 108 Cal. App. 4th 421*

*Board of Education of Sacramento City Unified School District v. Sacramento County Board of Education and Kenneth H. (2001) 85 Cal.App.4th 1321*

*Fremont Union High School District v. Santa Clara County Board (1991) 235 Cal. App. 3d 118 Garcia*

*v. Los Angeles Board of Education (1991) 123 Cal. App. 3d 807*

*John A. v. San Bernardino School District (1982) 33 Cal. 3d 301*

### **ATTORNEY GENERAL OPINIONS**

84 Ops.Cal.Atty.Gen. 146 (2001)

80 Ops.Cal.Atty.Gen. 348 (1997)

80 Ops.Cal.Atty.Gen. 91 (1997)

80 Ops.Cal.Atty.Gen. 85 (1997)

### **U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS PUBLICATIONS**

*Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline, January 2014*

### **WEB SITES**

*CSBA District and County Office of Education Legal Services: <https://legalservices.csba.org/>*

*CSBA: <http://www.csba.org>*

*California Attorney General's Office: <http://www.oag.ca.gov>*

*California Department of Education: <http://www.cde.ca.gov>*

*U.S. Department of Education, Office for Civil Rights:*

*<http://www.ed.gov/about/offices/list/ocr/docs/crdc-2012-data-summary.pdf>*

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*Management Resources (cont.):*

*U.S. Department of Education, Office of Safe and Healthy Students:  
<http://www2.ed.gov/about/offices/list/oese/oshs>*

*Cross References (cf.)*

*0410 – Nondiscrimination in District Programs and Activities*

*0450 – Comprehensive Safety Plan*

*0460 – Local Control And Accountability Plan (N/A)*

*1114 – District-Sponsored Social Media*

*1312.3 – Uniform Complaint Procedures*

*1313 – Civility*

*3513.3 – Tobacco-Free Schools*

*3513.4 – Drug And Alcohol Free Schools (N/A)*

*3513.4 – Liability Issues and Parent Groups Organizing Grad Night*

*3515 – Campus Security*

*3515.21 – Unmanned Aircraft Systems (Drones)*

*3515.3 – District Police/Security Department*

*3515.31 – School Resource Officers*

*3515.4 – Recovery For Property Loss Or Damage*

*3516.2 – Bomb Threats*

*4158/4258/4358 – Employee Security (N/A)*

*5000 – Concepts And Roles (N/A)*

*5112.1 – Exemptions From Attendance*

*5112.5 – Open/Closed Campus*

*5113 – Absences And Excuses (N/A)*

*5113.1 – Chronic Absence And Truancy (N/A)*

*5113.11 – Attendance Supervision*

*5116.2 – Involuntary Student Transfers*

*5117 – Interdistrict Attendance*

*5119 – Student Expelled From Other Districts (N/A)*

*5125 – Student Records*

*5125.2 – Withholding Grades, Diploma Or Transcripts*

*5131 – Conduct*

*5131.1 – Bus Conduct*

*5131.2 – Bullying*

*5131.4 – Student Disturbances*

*5131.5 – Vandalism And Graffiti*

*5131.6 – Alcohol And Other Drugs*

*5131.62 – Tobacco*

*5131.63 – Steroids (N/A)*

*5131.7 – Weapons And Dangerous Instruments*

*5137 – Positive School Climate*

*5138 – Conflict Resolution/Peer Medication (N/A)*

*5138 – Electronic Signaling or Communication Devices*

*5142 – Safety*

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*Cross References (cf.)(cont.)*

*5144 – Discipline (N/A)*

*5144 – Subpoena Power, Expulsion Proceedings*

*5144.2 – Suspension And Expulsion/Due Process (Students With Disabilities)*

*5144.4 – Required Parental Attendance (N/A)*

*5145.12 – Search And Seizure*

*5145.2 – Freedom Of Speech/Expression Student Free Speech*

*5145.3 – Nondiscrimination/Harassment (N/A)*

*5145.3 – Student Complaint Overview*

*5145.6 – Parent/Guardian Notification*

*5145.7 – Sexual Harassment*

*5145.71 – Title IX Sexual Harassment Complaint Procedures*

*5145.9 – Hate-Motivated Behavior*

*5148.3 – Preschool/Early Childhood Education*

*6142.4 – Service Learning/Community Service Classes*

*6145 – Extracurricular And Cocurricular Activities*

*6145.2 – Athletic Competition*

*6145.5 – Student Organizations And Equal Access*

*6145.8 – Assemblies And Special Events*

*6153 – School-Sponsored Trips*

*6154 – Homework/Makeup Work (N/A)*

*6154 – Homework K-6*

*6158 – Independent Study*

*6161.2 – Damaged Or Lost Instructional Materials*

*6163.4 – Student Use Of Technology*

*6164.2 – Guidance/Counseling Services*

*6164.6 – Identification And Education Under Section 504*

*6173 – Education For Homeless Children/Children in a Transitional Living Situation/Homeless Children*

*6173.1 – Education For Foster Youth*

*6173.4 – Education for American Indian Students (N/A)*

*6184 – Continuation Education*

*6185 – Community Day School (N/A)*

*9000 – Role Of The Board*

*9321 – Closed Session*

*9322 – Agenda/Meeting Materials*

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ADOPTED: September 9, 2019

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