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OAKLAND UNIFIED  
SCHOOL DISTRICT

*Community Schools. Driving Success*

OFFICE OF THE GENERAL COUNSEL

## Revised Memo

To: Board of Education  
cc: Superintendent Antwan Wilson

From: Curtiss Sarikey, Deputy Chief  
Jacqueline Minor, General Counsel

Date: April 29, 2015

### **Report to the Board -- Superintendent Recommendation to Modify BP 5144.1 Effective July 1, 2016 to Eliminate Willful Defiance and Disruption as Basis for Expulsion in Grades 4-12**

#### **I. RECOMMENDATION**

One year ago, at the April 23, 2014 Board meeting, the Board directed Staff to "re-visit" and bring back to the Board in one year, a recommendation to eliminate willful defiance.<sup>1</sup> After extensive review, engagement with stakeholders, and Staff, the Superintendent recommends to the Board effective July 1, 2016, the elimination of disruption and willful defiance as a basis for expulsion for all grade levels.

Between 2011 and 2014, the African American suspension rate for disruption/willful defiance declined from 1050 incidents to 630 incidents or a 37% decline. However, African American males continue to experience significantly disproportionate discipline for disruption/willful defiance. As discussed in more detail below, the District has made progress toward transforming school culture and climate. The progress has been made largely through expansions of Restorative Justice, Positive Behavioral Interventions and Supports, and Manhood Development Programs, analyzing data and using data to support transformation of school climates, engaging parents and students, professional development for Staff and revising discipline policies to create a uniform set of standards and expectations. At the April 1, 2015 Board meeting, the Board modified BP 5144.1 to conform with changes in State law which eliminated suspension and expulsions of students in K through 3<sup>rd</sup> grade for disruption or willful defiance and prohibits expulsion for defiance or disruption at all grade levels.

<sup>1</sup> Board of Education File No 14-0227, April 23, 2014, "Amendment - Board Policies and Administrative Regulations 5144 - Students - Discipline and 5144.1 - Students - Suspension and Expulsion / Due Process (Second Reading)"

## **II. ANALYSIS**

### **A. Office of African American Male Achievement (AAMA)**

The Board has established policies and standards of behavior in order to promote learning and protect the safety and well-being of all students and Staff (BP 5144.1 and AR 5144.1). The Board also recognized the importance of providing school-wide positive supports, using discipline strategies that keep students in school and in the classroom, and supporting students in learning to behave appropriately and solve conflicts peacefully.

Despite the progressive, inclusive Board Policy, in 2011, African American students were 32% of the OUSD students but 63% of students suspended were African American. African American male students were 16% of the students in the District, but 41% of those suspended were African American. It was clear that bold and courageous effort was needed.

Recognizing the clear need to specifically address the needs of African American male students in 2010 the District, under the leadership of then Superintendent Tony Smith, established the Office of African American Male Achievement (AAMA).

OUSD is the first District in the United States to create a department that specifically addresses the needs of African American male students. In establishing AAMA, the District recognized that the urban school crisis affects African American males unlike any other group. Consistent with national trends, OUSD has faced major challenges with successfully educating African Americans. The following 2009-10 statistics paint a horrific picture of this challenge:<sup>2</sup>

- 1) African American males in OUSD were chronically absent: they missed 17.6% of the academic year in elementary school, 19.8% in middle school, and 22.2% in high school
- 2) African American males comprised 17% of the population, but accounted for 42% of suspensions annually
- 3) Only 28% of African American males scored proficient on the California Standards Test (CST) for English
- 4) Only 30% scored proficient on the CST for Math.

### **B. The Manhood Development Program**

In 2010, AAMA initiated the Manhood Development Program (MDP), a unique academic and social emotional mentoring model for African American males. Facilitators for the program were carefully chosen based upon cultural competency, understanding of youth development, and past teaching experience. The Program Facilitators are credentialed, are members of the Oakland Education Association and the MDP class is A to G certified by the University of California and Cal State systems.

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<sup>2</sup> See, *The Black Sonrise*, Dr. Vajra Watson, Director of Research and Policy for Equity, University of California, Davis (2014)

During its first year, MDP proved so effective that in 2011-2012, the program grew from three to six sites. Today, the program is operating in 17 schools throughout the District: Castlemont, Dewey, Fremont, McClymonds, MetWest, Oakland, Oakland Technical, and Ralph Bunch high schools; Alliance, Claremont, Edna Brewer, Frick, Madison, Montera, and West Oakland middle schools; plus Parker and Piedmont elementary schools.

The MDP program sought to: 1) decrease suspensions and increase attendance; 2) decrease incarceration and increase graduation rates; and 3) decrease the achievement gap and increase literacy. The MDP program is achieving each of these objectives. Between 2010-2014<sup>3</sup>

1. 79% of MDP students have satisfactory or improved school discipline records.<sup>4</sup>
2. 20% of MDP students have improved in attendance.<sup>5</sup>
3. 30% of participants are reading at or above grade level and over the course of two years, 8% of students increased from below grade level to grade level or above.<sup>6</sup>
4. The average GPA for MDP students is 2.12 compared to a GPA of 1.7 for African American males who are not in the program.

#### **C. Structural Changes in the District that Support AAMA**

1. Every school is required to include specific goals and outcomes for African American males in their site plan.
2. OUSD School Quality Review standards include specific African American male standards.
3. AAMA Executive Director sits on the OUSD Cabinet – providing both access and a voice for African American males at the highest level of District administration leadership.
4. AAMA staff members participate in cross-functional committees to help formulate policies and structures in support of African American male students.

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<sup>3</sup> Findings on student academic and social-emotional outcomes taken from the AAMA Community Update: 2014 as well as analyses by Gerald Williams, Oakland Unified School District

<sup>4</sup> Suspensions were calculated by looking at students in third and fourth cohort (2012-13 and 2013-14) of the MDP. The number of days suspended for the 2012-13 and 2013-14 school years were compared side by side. A separate column was created to note if the students had improved on days suspended from the previous year, moved backwards, received more suspensions than the previous year, or stayed the same.

<sup>5</sup> Chronic absence has negative effects on student achievement and is defined as missing 10% or more of school time. This includes excused and unexcused absences.

<sup>6</sup> Data from the Scholastic Reading Inventory (SRI) test.

#### **D. Restorative Justice**

In 2005, the District initiated a Whole School Restorative Justice program aimed to reduce harm and build community. In 2010<sup>7</sup>, the Board approved a resolution launching a three-year District-wide Restorative Justice (RJ) Initiative and declared that it is “committed to creating and supporting a culture shift in the way the district systematically responds to student discipline problems in District schools by moving toward restorative approaches, not inconsistent with law, which re-integrate rather than exclude.” The District has made significant advances in implementing restorative practices as an alternative to suspending students. Particularly in the last three years, there has been substantial growth in the number of schools implementing RJ practices, staffing, professional development and reducing suspensions especially of African American students. Indeed, the most significant decline in suspensions at schools implementing RJ has been in the number of African American students suspended for disruption/willful defiance, down from 1,050 to 630, a decrease of 40% or 420 fewer suspensions in one year. Today, the District uses both the whole school and peer RJ models.

#### **E. Voluntary Resolution**

In 2012, OUSD entered into a Voluntary Resolution Plan with the United States Department of Education, Office of Civil Rights agreeing to eliminate disparities in discipline for African American students.

The District is committed to achieving racial and educational equality for all of its students, including in achievement and discipline, and implementing policies and solutions that address intentional discrimination, as well as explicit, implicit bias and structural racism. As part of the VRP, District Staff presents a public progress and data report to the Board and community at least once annually and provides a written progress report annually to OCR. The annual OCR report is presented to the Board and is posted on the Board’s website. Additionally, the VRP Implementation Team is led by the Chief of Schools, thereby facilitating a cross-departmental team designed to ensure coordination and integration of the VRP objectives across OUSD.

#### **F. Disproportionality**

In 2011-12, African American students made up 32% of all OUSD students, but were 63% of all OUSD students who were suspended. African American male students made up 16% of all OUSD students, but were 41% of all OUSD students who were suspended. All other ethnicities were underrepresented among suspended students as compared to their percentage of the overall OUSD student enrollment. For example, Latino students made up 38% of OUSD students but were 27% of all OUSD students who were suspended. Latino males made up 20% of OUSD students, and 19% of suspended students.

1. In 2012-13 the District suspension rate dropped to 6% and the suspension rate of African American male students was cut by more than a third.

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<sup>7</sup>See, Restorative Justice in Oakland Schools, Implementation and Impacts, September 2014, prepared for the Office of Civil Rights, US Department of Education

2. In 2012-13, there were 177 DHP referrals, including 108 for violence/threats of which 12 resulted in actual expulsion by the Board.
3. In 2013-14, there were 135 DHP referrals, and 104 for violence/threats of which 21 resulted in actual expulsion by the Board.

Reduction in African American male students receiving suspensions/expulsions helped to drive down the overall suspension rate in OUSD. However, African American males continue to experience disproportionate discipline.

### **G. Willful Defiance and Disruption**

Between 2011 and 2014, the African American suspension rate for disruption/willful defiance declined from 1050 incidents to 630 incidents or a 37% decline. However, African American males continue to experience significantly disproportionate discipline for disruption/willful defiance.

#### **1. The drivers of disproportionality resulting in discipline for disruption and willful defiance include:**

- a. School culture and climate which focuses on punishment after the fact rather than restorative practices and prevention; inconsistent rules, norms, and expectations for student behavior and the need to explicitly teach and practice behavioral expectations; adult response to student behavior which sometimes escalates rather than de-escalates situations; and school staff with implicit cultural bias in perceptions to student behavior.
- b. Classroom Instruction which is engaging, challenging and culturally responsive; the need to improve through more professional development explicit social and emotional learning for staff and students

#### **2. District Strategies to support students to address the drivers of disproportionality include:**

- a) Positive behavior expectations defined and taught for every context
- b) Student input on behavioral expectations and reinforcements
- c) Personalization for middle and high school students (e.g., 9<sup>th</sup> grade small learning communities)
- d) Restorative practices that repair harm, restore relationships, and build community
- e) Trauma informed services & wrap-around supports
- f) Multi-tiered systems of support with an emphasis on prevention and community building

**3. District strategies to supports adults to address the drivers of disproportionality include:**

- a) Training and professional learning about the Common Core State Standards & Next Generation Science Standards
- b) Training and professional learning for school staff regarding school culture transformation, such as: Caring School Communities, Positive Behavior Intervention and Supports, Restorative Justice, classroom management, de-escalation and conflict resolution
- c) Training and professional learning for all school staff in cultural awareness and addressing implicit bias, grounded in an asset-based approach to African American male students
- d) Training and professional learning focused on Social and Emotional Learning skills and competencies
- e) Implementation of the Universal Referral Form, including training in the pre- and post- interventions
- f) Expansion of Positive Behavioral Interventions and Supports, Restorative Justice, the Manhood Development Program, and trauma-informed practices at District Schools

<b>Program</b>	<b># of Sites Currently Implementing</b>
Restorative Justice (RJ)	23
Positive Behavior and Supports (PBIS)	33
Manhood Development Program (MDP)	16

**H. Three Year Plan**

On November 30, 2014, the District submitted to OCR a Three Year Plan ("TRANSFORMING SCHOOL CULTURE" THREE YEAR PLAN, OCR COMPLIANCE REVIEW NO. 09125001) to achieve the objectives of the VRP and specifically to eliminate disproportionality. The cornerstones of the Three Year Plan are:

- I. Address inherent and unconscious bias against African American students
- II. Support the establishment of consistent expectations for behavior
- III. Build capacity and tools for intervention over exclusion

- IV. Engage families and students
- V. Integrate VRP goals into all district efforts to support and enforce high-quality academic experiences
- VI. Infuse data-driven decision-making and evaluation into school sites and VRP as a whole

The OUSD VRP Team meets at least monthly to monitor implementation and progress of the Transforming School Culture three-year plan, and reviews data, at the student, school and program levels, to adjust plans toward achieving the goal of eliminating disproportionate discipline. The VRP Team reports publicly to the board in written report and/or presentation twice annually, and makes all data reports and plans available on the OUSD website.

The OUSD VRP team consults and collaborates regularly with a group of local and national experts in the areas of equity and inclusiveness, culturally-relevant PBIS, Restorative Justice, trauma-informed services, AAMA, engaged classrooms youth development and evaluation.

### **III. STAFF RECOMMENDATIONS**

The District has made progress toward transforming school culture by 1) building infrastructure at the central office to track discipline; 2) building capacity at school sites to react in more positive ways to student behavior; and 3) setting norms and expectations throughout the District for adult responses to student behavior. The progress has been made largely through expansions of Restorative Justice, Positive Behavioral Interventions and Supports, and Manhood Development Programs, analyzing data, engaging parents and students, professional development for Staff and revising discipline policies to create a uniform set of standards and expectations.

At the April 1, 2015 Board meeting, the Board modified BP 5144.1 to conform with changes in State law which eliminated suspension and expulsions of students in K through 3<sup>rd</sup> grade for disruption or willful defiance and prohibits expulsion for defiance or disruption at all grade levels. The Staff recommends to the Board effective July 1, 2016, the elimination of disruption and willful defiance as a basis for suspension for all grade levels TK-12. During the period leading up to July 1, 2016 the District will continue to invest in the expansion of best practices (i.e. PBIS, RJ, Manhood Development, SEL, etc.) and training of staff at all levels to ensure the successful implementation of the Board Policy.

The Board will review suspensions for defiance data in Grades 4 through 12 in August 2015 and January 2016. If based on review of the data, it appears further steps should be undertaken to meet the goal of eliminating suspensions for defiance by July 1, 2016, the Board will direct the Superintendent to implement such additional measures to achieve the goal of no suspensions for defiance by July 1, 2016.

### **IV. TRANSPARENCY AND ACCOUNTABILITY**

- A. By July 1, 2015, the Superintendent will establish procedures for regular, accurate, and public data reporting on disciplinary measures and interventions. The procedures will include at least a requirement that the

District make available on the District's public website twice annually as a part of VRP and Transforming School Culture Plan report to the Board.

B. The data will include at least the following:

- 1) The aggregate number and rates of office referrals, teacher suspensions, supervised in-school and out-of-school suspensions, involuntary transfers, expulsion referrals, expulsions, on-campus citations, and school-based arrests (from both OPD and OSPD), and four-year graduation and drop-out rates, disaggregated by all subgroups, including race, gender, ethnicity, English Language Learner status, socio-economic status, foster youth, homeless youth, and disability and by offense for the District.
- 2) The number of instructional days and ADA funding lost to suspensions, transfers, and expulsions.
- 3) The school sites to which students were transferred after the Disciplinary Review Hearing procedure or through any involuntary transfer process, whether they enrolled subsequently, and the outcomes for such students, including, but not limited to, graduation and drop-out rates.
- 4) In reporting such data, the privacy of individual students and teachers shall be protected. Data will not be disaggregated in any manner that could reveal student identity to the public or to knowledgeable members of the school community. The data shall be reported for the district as a whole and for each school-site.
- 5) The procedures shall also include requirements that appropriate district and school officials regularly review this data and take action to address disparities or disproportionate use of punitive discipline measures for particular subgroups.

C. LCAP Engagement and Community Meeting

- 1) As part of the annual LCAP engagement plan the District will host at least one community study session on the LCAP goal area addressing school climate and culture, including a data report on progress toward LCAP indicators.
- 2) The District will meet and confer with interested community stakeholders as needed to plan and prepare for any of the aforementioned public reports or engagements

D. Convene Safe And Strong Schools Sub-Committee

The Superintendent shall convene a Safe and Strong Schools sub-committee as part of the Pathway to Excellence Strategic Plan Quality Community Schools Committee that will include parents, students, representatives from

community organizations, teachers, administrators and partner organizations. The sub-committee will meet at least twice a year, one meeting to occur in January to review the annual report to OCR that is submitted in the fall of the prior year and review the District's progress in successful implementation of RJ, PBIS and Manhood Development programs and the Three Year Plan ("Transforming School Culture" Three Year Plan, OCR Compliance Review No. 09125001); and one meeting in October to review 1) the discipline data from the prior school year, 2) the District's progress in successful implementation of RJ, PBIS and Manhood Development programs and the Three Year Plan ("Transforming School Culture" Three Year Plan, OCR Compliance Review No. 09125001), and 3) through June 30, 2016, data regarding suspensions for defiance in Grades 4 through 12. In reviewing the suspension for defiance data, the sub-committee shall consider whether to recommend that the Superintendent undertake additional measures if it appears the District is not on target for the successful elimination of willful defiance as a basis for suspension or expulsion for all grade levels TK-12 effective July 1, 2016.

E. Annual Community Forum

The Superintendent will convene a community forum in the Spring of 2016 and 2017 to update the community on transforming school climate and disparities in school discipline, including but not limited to the implementation of the VRP and the Three Year Plan and to establish a dialogue with the community about the types of non-policing resources and interventions needed to keep schools strong and safe and students out of the juvenile justice system. The Superintendent will report the results of the Community Forum to the Board during the Superintendent's report as a part of a regularly scheduled Board meeting. The need to continue an annual forum will be considered as part of the districts exit plan from the VRP with the OCR in 2017.

- F. Complaint Process -- The Superintendent shall develop a complaint form to allow members of the school community and public to raise concerns if restorative justice or another restorative approach is not available at a school site as an alternative to suspension. The complaint form will be available on the District's website, the District Discipline Office and the District Ombudsperson's Office. The Ombudsperson shall investigate such complaints and within 90 days of complaint submission develop a plan with the school site for addressing the complaint and provide a written response to the complaining party.

**V. EXPECTED OUTCOMES**

OUSD is committed to creating safe, healthy and supportive school environments for all students, and providing the supports, training and policy guidance necessary to build positive adult-student interactions and relationships across the District. The OUSD Community Schools strategy names the importance of a comprehensive approach to student achievement,

including: rigorous expectations and academics, social emotional learning, student and family engagement, expanded learning opportunities after school and in summer, health and wellness services, kindergarten readiness and literacy, successful transitions and positive school culture. Taken together, every OUSD student will thrive and graduate college, career and community ready.

The net effect of this recommendation will result in increased instructional time for African American male students and a reduction of exclusionary disciplinary practices for willful defiance and disruption.

# OAKLAND UNIFIED SCHOOL DISTRICT

## Board Policy

Students

BP 5144.1

### Suspension and Expulsion / Due Process

The Governing Board has established policies and standards of behavior in order to promote learning and protect the safety and well-being of all students. In response to serious or repeated violations of established policies and standards, it may be necessary to suspend or expel a student from regular classroom instruction.

(cf. 5144 - Discipline)

The Board does not support a zero tolerance approach to discipline. The Board recognizes the importance of providing school wide positive supports, using discipline strategies that keep students in school and in the classroom, and supporting students in learning to behave appropriately and solve conflicts peacefully.

Before subjecting a student to disciplinary sanctions that result in a loss of instructional time, the Superintendent or designee shall, to the extent allowed by law, first use alternative strategies as described in AR 5144 - Discipline. Except where suspension for a first offense is permitted by 48900.5, as further described in AR 5144.1, in-school and out-of-school suspension shall be imposed only when other means of correction fail to bring about proper conduct or the student's presence causes a danger to persons. (Education Code 48900.5) Expulsion is an action taken by the Board only for severe breaches of discipline by a student.

(cf. 1020 - Youth Services)

(cf. 5138 - Conflict Resolution/Peer Mediation)

(cf. 5144 - Discipline)

(cf. 6142.4 - Service Learning/Community Service Classes)

(cf. 6164.2 - Guidance/Counseling Services)

(cf. 6164.5 - Student Success Teams)

The teacher of any class from which a student is suspended pursuant to Section 48910 shall require the student to complete any assignments and tests missed during the suspension. The school will monitor and address the educational needs of the student that arise due to the loss of instructional time. (Education Code 48913).

Suspension and expulsion may not be imposed for truancy, tardiness, or absence. Alternatives to suspension or expulsion shall be used with students who are truant, tardy, or otherwise absent from assigned school activities.

(cf. 5113 - Absences and Excuses)

(cf. 5113.1 - Chronic Absence and Truancy)

Effective January 1, 2015, as provided in California Education Code section 48900(k), no student enrolled in grades ~~T-K~~ kindergarten through third grade may be suspended ~~or expelled~~ for disrupting school activities or willfully defying the authority of school personnel (“disruption and willful defiance”) and no student enrolled in grades TK through twelve (TK-12) shall be expelled for the same.

Effective July 1, 2016, no student enrolled in grades T-Kindergarten through twelve (TK-12) grades may be suspended or expelled for disrupting school activities or willfully defying the authority of school personnel. The Board will review data regarding suspensions for defiance in Grades 4 through 12 in August 2015 and January 2016. If based on review of the data, it appears further steps should be undertaken to meet the goal of eliminating suspensions for disruption and willful defiance by July 1, 2016, the Board will direct the Superintendent to implement such additional measures to achieve the goal of no suspensions for disruption and willful defiance by July 1, 2016.

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The grounds for suspension and expulsion and the procedures for considering, recommending, and/or implementing suspension and expulsion shall be specified by administrative regulation and must be consistent with the requirements set forth here.

Effective January 1, 2015, the District may not involuntarily transfer a student in grades TK- 3<sup>rd</sup> grade to another school based on a finding of disruption of school activities or willful defiance of the authority of school personnel (California Education Code section 48900(k)).

Effective July 1, 2016, the District~~The Superintendent, Certificated Deputy Superintendent, or Certificated Associate Superintendents~~ may ~~not~~ involuntarily transfer a student to another school based on a finding of disruption of school activities or willful defiance of the authority of school personnel (California Education Code section 48900(k)). ~~that a student committed a violation of Education Code Section 48900.~~

Involuntary transfers may only occur following a recommendation for expulsion and after a hearing before the District's Disciplinary Hearing Panel (DHP) consistent with the requirements in Education Code section 48918 and the notice and hearing procedures for expulsions. ~~and DHP shall. The Superintendent will develop fair and equitable procedures to govern the involuntary transfer process that~~ recognize the use of a positive approach to student behavior and maximize instructional time for every student. An involuntary transfer to a continuation school must be made pursuant to Education Code section 48432.5.

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

(cf. 0410 - Nondiscrimination in District Programs and Activities)

## Due Process

The Board shall provide for the fair and equitable treatment of students facing suspension and 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)

(cf. 5119 - Students Expelled from Other Districts)  
(cf. 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities))

#### Expansion of Restorative Justice, the Manhood Development Program, PBIS and other restorative and youth development approaches

The Board recognizes that the District has made progress toward creating a positive school culture through various means, including through the use of Restorative Justice (RJ), Positive Behavioral Interventions and Supports, and the Manhood Development Program. The Board believes that the continued expansion of such programs is central to the creation of safe, healthy and supportive school environments for all students in the District. The Board supports and will prioritize funding for RJ, Manhood Development Program and PBIS programs and coordinators at school sites and professional development, coaching and support for teachers and administrators to successfully implement these programs.

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#### **Supervised Suspension Classroom**

Supervised suspension shall be imposed only when other means of correction have failed to bring about proper conduct. (Education Code 48900.5)

The Board recognizes that students who are suspended from school often have no supervision or guidance during the school hours when they are off campus and may fall behind in the coursework. The Board believes that, in many cases, it would be better to manage the student's behavior by keeping the student at school and providing him/her with supervision that is separated from the regular classroom.

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.

#### **Decision Not to Enforce Expulsion Order**

On a case-by-case basis, the enforcement of an expulsion order may be suspended by the Board pursuant to the requirements of law and administrative regulation. (Education Code 48917)

#### Expungement of Student Disciplinary Records

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As provided in Board Policy 5144.3, effective January 15, 2014, a student, parent, guardian,

appointed advocate on behalf of the student, or Superintendent on behalf of a student, may apply for expungement of student disciplines record which meet the criteria set forth in BP 5144.3.

### **Monitoring the Use of Suspension and Expulsion**

By July 1, 2015, the Superintendent shall promulgate Administrative Regulations that establish the procedures for regular, accurate, and public data reporting on disciplinary measures and interventions. The procedures will include at least a requirement that the District make available on the District's public website twice annually, within 60 days after the completion of each semester, data on school discipline, behavioral interventions, and student outcomes.

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The data will include at least the following:

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1. The aggregate number and rates of office referrals, teacher suspensions, supervised in-school and out-of-school suspensions, involuntary transfers, expulsion referrals, expulsions, on-campus citations, and school-based arrests (from both OPD and OSPD), and four-year graduation and drop-out rates, disaggregated by all subgroups, including race, gender, ethnicity, English Language Learner status, socio-economic status, foster youth, homeless youth, and disability and by offense for the district and by school-site.

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2. The number of instructional days and ADA funding lost to suspensions, transfers, and expulsions disaggregated by the aforementioned subgroups.

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3. The school sites to which students were transferred after the Disciplinary Review Hearing procedure or through any involuntary transfer process, whether they enrolled subsequently, and the outcomes for such students, including, but not limited to, graduation and drop-out rates.

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4. In reporting such data, the privacy of individual students and teachers shall be protected. Data will not be disaggregated in any manner that could reveal student identity to the public or to knowledgeable members of the school community. The data shall be reported for the district as a whole and for each school-site.

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5. The procedures shall also include requirements that appropriate district and school officials regularly review this data and take action to address disparities or disproportionate use of punitive discipline measures for particular subgroups.

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### **Convene Safe And Strong Schools Sub-Committee**

The Superintendent shall convene a Safe and Strong Schools sub-committee as part of the Pathway to Excellence Strategic Plan Quality Community Schools Committee that will include parents, students, representatives from community organizations, teachers, administrators and partner organizations. The sub-committee will meet at least twice a year, one meeting to occur in January to review the annual report to OCR that is submitted in the fall of the prior year and

review the District's progress in successful implementation of RJ, PBIS and Manhood Development programs and the Three Year Plan ("Transforming School Culture" Three Year Plan, OCR Compliance Review No. 09125001); and one meeting in October to review 1) the discipline data from the prior school year, 2) the District's progress in successful implementation of RJ, PBIS and Manhood Development programs and the Three Year Plan ("Transforming School Culture" Three Year Plan, OCR Compliance Review No. 09125001), and 3) through June 30, 2016, data regarding suspensions for defiance in Grades 4 through 12. In reviewing the suspension for defiance data, the sub-committee shall consider whether to recommend that the Superintendent undertake additional measures if it appears the District is not on target for the successful elimination of willful defiance as a basis for suspension or expulsion for all grade levels TK-12 effective July 1, 2016.

### Annual Community Forum

The Superintendent will convene a community forum in the Spring of 2016 and 2017 to update the community on transforming school climate and disparities in school discipline, including but not limited to the implementation of the VRP and the Three Year Plan and to establish a dialogue with the community about the types of non-policing resources and interventions needed to keep schools strong and safe and students out of the juvenile justice system. The Superintendent will report the results of the Community Forum to the Board during the Superintendent's report as a part of a regularly scheduled Board meeting. The need to continue an annual forum will be considered as part of the districts exit plan from the VRP with the OCR in 2017.

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### Complaint Process

The Superintendent shall develop a complaint form to allow members of the school community and public to raise concerns if restorative justice or another restorative approach is not available at a school site as an alternative to suspension. The complaint form will be available on the District's website, the District Discipline Office and the District Ombudsperson's Office. The Ombudsperson shall investigate such complaints and within 90 days of complaint submission develop a plan with the school site for addressing the complaint and provide a written response to the complaining party.

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~~The Superintendent or designee shall present a report to the Board on a bi-annual basis (in August and February) regarding the use of suspension and expulsion in district schools with the goal of determining whether revisions to Board policies and procedures must be made or training and support provided to reduce and eliminate disproportionate rates of discipline of African-American students. The report shall include, but is not limited to, outcome data which the district is required by law to collect and data related to the effect of suspension and/or expulsion on the district's under-served populations, including African American, Latino, and English Language Learner students as well as students with disabilities.~~

(cf. 9320 - Meetings and Notices)

| **Effective July 1, 2014**

Legal Reference:

EDUCATION CODE

212.5 Sexual harassment

233 Hate violence

1981 Enrollment of students in community school

17292.5 Program for expelled students

32261 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

48660-48667 Community day schools

48853.5 Foster youth

48900-48927 Suspension and expulsion

48950 Speech and other communication

48980 Parental notifications

49073-49079 Privacy of student records

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 Standards and schedules

LABOR CODE

230.7 Discharge or discrimination against employee for taking 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  
 288 Lewd or lascivious acts with child under age 14  
 288a Oral copulation  
 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  
 729.6 Counseling  
 UNITED STATES CODE, TITLE 18  
 921 Definitions, firearm  
 UNITED STATES CODE, TITLE 20  
 1415(K) Placement in alternative educational setting  
 7151 Gun-free schools  
 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  
 Garcia v. Los Angeles Board of Education (1991) 123 Cal. App. 3d 807  
 Fremont Union High School District v. Santa Clara County Board (1991) 235 Cal. App. 3d 1182  
 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. 91 (1997)  
 80 Ops.Cal.Atty.Gen. 85 (1997)

Management Resources:

CSBA PUBLICATIONS

Safe Schools: Strategies for Governing Boards to Ensure Student Success, 2011

U.S. DEPARTMENT OF EDUCATION PUBLICATIONS

Office for Civil Rights' (OCR) April 2011 Dear Colleague Letter: Sexual Violence

Civil Rights Data Collection Summary, March 2012

WEB SITES

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>

U.S. Department of Education, Office of Safe and Drug-Free Schools:  
<http://www.ed.gov/about/offices/list/osdfs>

| 7/14/04; 4/23/14A; 4/1/15A; [5/13/15](#)

# OAKLAND UNIFIED SCHOOL DISTRICT

## Administrative Regulation

AR 5144.1

### Students

Suspension and Expulsion Process

#### Notice of Regulations

At the beginning of each school year, the District shall ensure that all students and parents/guardians are notified in writing of the availability of all rules related to discipline, including suspension and expulsion. (Education Code 35291, 48900.1, 48980)

(cf. 5144 - Discipline)

(cf. 5145.6 - Parental Notifications)

#### Definitions

Suspension from school means removal of a student from ongoing instruction for adjustment purposes.

The teacher of any class from which a student is suspended pursuant to Section 48910 shall require the student to complete any assignments and tests missed during the suspension. The school will monitor and address the educational needs of the student that arise due to the loss of instructional time. (Education Code 48913). However, suspension does not mean any of the following: (Education Code 48925)

1. Reassignment to another education program or class at the same school where the student will receive continuing instruction for the length of day prescribed by the Governing Board for students of the same grade level.
2. Referral to a certificated employee designated by the principal to advise students.
3. Removal from the class, but without reassignment to another class or program, for the remainder of the class period without sending the student to the principal or designee as provided in Education Code 48910. Removal from a particular class shall not occur more than once every five school days.

Referral means removal from classroom instruction for discipline reasons.

Expulsion means removal of a student from the immediate supervision and control, or the general supervision, of school personnel. (Education Code 48925)

Day means a calendar day unless otherwise specifically provided. (Education Code 48925)

School day means a day upon which the schools of the district are in session or weekdays during the summer recess. (Education Code 48925)

Student includes a student's parent/guardian or legal counsel. (Education Code 48925)

Principal's designee means one or more administrators or, if there is not a second administrator at one school site, a certificated person specifically designated by the principal, in writing, to assist with disciplinary procedures. Only one such person may be designated at any time as the principal's primary designee and only one such person may be designated as secondary designee for the school year. The names of such persons shall be on file in the principal's office. (Education Code 48911)

School property, for the purposes described in Education Code 48900, includes, but is not limited to, electronic files and databases. (Education Code 48900(u))

The District database is the Aeries Student Information System.

Restorative Justice (RJ) is a process where all stakeholders affected by an injustice have an opportunity to discuss how they have been affected by the injustice and to decide what should be done to repair the harm.

Positive Behavioral Interventions and Supports (PBIS) is a framework for providing a range of systemic and individualized strategies for achieving important academic and behavioral outcomes while preventing problem behaviors.

Social and emotional learning (SEL) is a process through which children and adults develop the fundamental skills for life effectiveness. The five SEL competencies are: self-awareness, self-management, social awareness, relationship skills, and responsible decision-making.

Response to Intervention (RTI) is a prevention system focused on maximizing student achievement, reducing behavior problems, and avoiding loss of instructional time through the use of tiered interventions.

### **Grounds for Suspension and Expulsion**

The following is a list of grounds for which suspension and expulsion may be permitted or shall be imposed subject to the restrictions and requirements herein:

(cf. 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities))

1. Caused, attempted to cause, or threatened to cause physical injury to another person or willfully used force or violence upon another person, except in self-defense (Education Code 48900(a))

A student who aids or abets the infliction or attempted infliction of physical injury on another person, as defined in Penal Code 31, may be suspended, but not expelled. However, such a student may be suspended or expelled pursuant to Education Code 48900(a) when he/she has been adjudged by a juvenile court to have committed, as an aider or abettor, a crime of physical violence in which the victim suffered great or serious bodily injury. (Education Code 48900(t))

2. 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 student had obtained written permission to possess the item from a certificated school employee, with the principal or designee's concurrence (Education Code 48900(b))

(cf. 5131 - Conduct)

(cf. 5131.7 - Weapons and Dangerous Instruments)

3. Unlawfully possessed, used, sold, otherwise furnished, or was under the influence of any controlled substance as defined in Health and Safety Code 11053-11058, alcoholic beverage, or intoxicant of any kind (Education Code 48900(c))

(cf. 5131.6 - Alcohol and Other Drugs)

4. Unlawfully offered, arranged, or negotiated to sell any controlled substance as defined in Health and Safety Code 11053-11058, alcoholic beverage, or intoxicant of any kind, and then sold, delivered, or otherwise furnished to any person another liquid, substance, or material and represented same as such controlled substance, alcoholic beverage, or intoxicant (Education Code 48900(d))

5. Committed or attempted to commit robbery or extortion (Education Code 48900(e))

6. Caused or attempted to cause damage to school property or private property (Education Code 48900(f))

7. Stole or attempted to steal school property or private property (Education Code 48900(g))

8. Possessed or used tobacco or products containing tobacco or nicotine products, including, but not limited to, cigars, cigarettes, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets, and betel, except that this restriction shall not prohibit a student from using or possessing his/her own prescription products (Education Code 48900(h))

(cf. 5131.62 - Tobacco)

9. Committed an obscene act or engaged in habitual profanity or vulgarity (Education Code 48900(i))

10. Unlawfully possessed, offered, arranged, or negotiated to sell any drug paraphernalia, as defined in Health and Safety Code 11014.5 (Education Code 48900(j))

11. Effective January 1, 2015, as provided in California Education Code section 48900(k), no student enrolled in grades T-Kindergarten through third grade may be suspended or expelled for disrupting school activities or willfully defying the authority of school personnel (“disruption and willful defiance”) and no student in TK-12 may be expelled for willful disruption or defiance.

Effective July 1, 2016, no student enrolled in grades T-Kindergarten through twelve (TK-12) grades may be suspended or expelled for disrupting school activities or willfully defying the authority of school personnel. The Board will review data regarding suspensions for defiance in Grades 4 through 12 in August 2015 and January 2016. If based on review of the data, it appears further steps should be undertaken to meet the goal of eliminating suspensions for defiance by July 1, 2016, the Board will direct the Superintendent to implement such additional measures to achieve the goal of no suspensions for defiance by July 1, 2016. ~~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 48900(k)). However, a student may not be subjected to expulsion in response to willful defiance as described in E.C. Section 48900 (k).~~

(cf. 5131.4 - Student Disturbances)

12. Knowingly received stolen school property or private property (Education Code 48900(l))

13. Possessed an imitation firearm (Education Code 48900(m))

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 48900(m))

14. Committed or attempted to commit a sexual assault as defined in Penal Code 261, 266c, 286, 288, 288a, or 289, or committed a sexual battery as defined in Penal Code 243.4 (Education Code 48900(n))

15. Harassed, threatened, or intimidated a student who is a complaining witness or witness in a school disciplinary proceeding for the purpose of preventing that student from being a witness and/or retaliating against that student for being a witness (Education Code 48900(o))

16. Unlawfully offered, arranged to sell, negotiated to sell, or sold the prescription drug Soma (Education Code 48900(p))

17. Engaged in, or attempted to engage in, hazing (Education Code 48900(q))

Hazing means a method of initiation or pre-initiation into a student organization or body, whether or not the organization or body is officially recognized by an educational institution, which is likely to cause serious bodily injury or personal degradation or disgrace resulting in physical or mental harm to a former, current, or prospective student. Hazing does not include athletic events or school-sanctioned events.

18. Engaged in an act of bullying (Education Code 48900(r))

Bullying means any severe or pervasive physical or verbal act or conduct, including communications made in writing or by means of an electronic act, directed toward one or more students that has or can reasonably be predicted to have the effect of placing a reasonable student in fear of harm to himself/herself or his/her property; cause the student to experience a substantially detrimental effect on his/her physical or mental health; or cause the student to experience substantial interferences with his/her academic performance or ability to participate in or benefit from the services, activities, or privileges provided by a school.

Bullying shall include any act of sexual harassment, hate violence, or harassment, threat, or intimidation, as defined in Education Code 48900.2, 48900.3, or 48900.4 (items #20-22 below), that has any of the effects described above on a reasonable student.

Electronic act means the transmission of a communication, including, but not limited to, a message, text, sound, image, or post on a social network Internet web site, by means of an electronic device, including, but not limited to, a telephone, wireless telephone, or other wireless communication device, computer, or pager. A post on a social network Internet web site shall include, but is not limited to, the posting or creation of a burn page or the creation of a credible impersonation or false profile for the purpose of causing a reasonable student any of the effects of bullying described above.

Reasonable student means a student, including, but not limited to, a student who has been identified as a student with a disability, who exercises average care, skill, and judgment in conduct for a person of his/her age, or for a person of his/her age with his/her disability. (Education Code 48900(r))

(cf. 1114 - District-Sponsored Social Media)

(cf. 5131.2 - Bullying)

(cf. 6164.4 - Identification and Evaluation of Individuals for Special Education)

(cf. 6164.6 - Identification and Education under Section 504)

19. Made terrorist threats against school officials and/or school property. (Education Code 48900.7)

A terrorist threat includes any written or oral statement by a person who willfully threatens to commit a crime which will result in death or great bodily injury to another person or property damage in excess of \$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. (Education Code 48900.7)

A student in grades 4-12 is also subject to suspension or recommendation for expulsion when it is determined that he/she:

20. Committed sexual harassment as defined in Education Code 212.5 (Education Code 48900.2)

Sexual harassment means conduct which, when considered from the perspective of a reasonable person of the same gender as the victim, is sufficiently severe or pervasive as to have a negative impact upon the victim's academic performance or to create an intimidating, hostile, or offensive educational environment. (Education Code 212.5, 48900.2)

(cf. 5145.7 - Sexual Harassment)

21. Caused, attempted to cause, threatened to cause, or participated in an act of hate violence as defined in Education Code 233 (Education Code 48900.3)

Hate violence means any act punishable under Penal Code 422.6, 422.7, or 422.75. Such acts include injuring or intimidating a victim, interfering with the exercise of a victim's civil rights, or damaging a victim's property because of the victim's race, ethnicity, religion, nationality, disability, gender, gender identity, gender expression, or sexual orientation; a perception of the presence of any of those characteristics in the victim; or the victim's association with a person or group with one or more of those actual or perceived characteristics. (Education Code 233; Penal Code 422.55)

(cf. 5145.9 - Hate-Motivated Behavior)

22. Intentionally engaged in harassment, threats, or intimidation against district personnel or students 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 school personnel or students by creating an intimidating or hostile educational environment (Education Code 48900.4)

(cf. 5145.3 - Nondiscrimination/Harassment)

A student may be suspended or expelled for any of the acts listed above if the act is related to school activity or school attendance occurring at any district school or within any other school district, at any time, including, but not limited to, the following: (Education Code 48900(s))

1. While on school grounds
2. While going to or coming from school

(cf. 5131.1 - Bus Conduct)

3. During the lunch period, whether on or off the school campus

(cf. 5112.5 - Open/Closed Campus)

4. During, going to, or coming from a school-sponsored activity

#### **Teacher-Initiated Suspensions Pursuant to Section 48910**

The Board desires the adoption of the RTI framework to facilitate a consistent approach for positive, pro-social behavior management (BP 5144). The District expects teachers to attempt RTI interventions prior to initiating a suspension pursuant to Section 48910 except where suspension for a first offense is permitted or mandated by law, as described on pp. 8-9 below.

When removing a student from his/her class pursuant to Section 48910, the teacher shall immediately report this action to the principal or designee and send the student to the principal or designee for appropriate action. If that action requires the continuing presence of the student at school, he/she shall be appropriately supervised during the class periods from which he/she has been removed. (Education Code 48910)

The site administrator or designee shall ensure that site staff completed the following:

1. The teacher completed the Teacher-Initiated Pupil Suspension Report and, starting in the 2014-2015 school year, the universal office referral form.
2. The teacher contacted the parent/guardian to request their participation in a parent-teacher conference regarding the suspension within 24 hours. A counselor or psychologist may attend the conference if it is practicable, and a school administrator shall attend if either the parent/guardian or teacher so requests. (Education Code 48910)
3. The site administrator or designee reviewed the universal office referral form and completed the in-school suspension form if warranted.
4. The site administrator or designee contacted parent/guardian regarding the suspension.
5. The site administrator or designee recorded the classroom interventions and referral in the District database.

(cf. AR 5144)

A student suspended from class pursuant to Section 48910 shall not be returned to class during the period of suspension without the approval of the teacher of the class and the principal. (Education Code 48910)

A student suspended from class pursuant to Section 48910 shall not be placed in another regular class during the period of suspension. However, if a student is assigned to more than one class per day, he/she may be placed in any other regular classes except those held at the same time as the class from which the student was removed. (Education Code 48910)

| The teacher of any class from which a student is suspended pursuant to Section 48910 ~~may~~ shall

require the student to complete any assignments and tests missed during the suspension. The school will monitor and address the educational needs of the student that arise due to the loss of instructional time. (Education Code 48913)

When suspending a student in Grades TK-3 from class for committing an obscene act, engaging in habitual profanity or vulgarity, ~~disrupting school activities, or otherwise willfully defying valid staff authority~~, the teacher of the class may require any parent/guardian who lives with the student to attend a portion of the school day in the class from which the student is being suspended, to assist in resolving the classroom behavior problems. (Education Code 48900.1) The teacher of the class may also require any parent/guardian who lives with the student to attend a portion of the school day in the class to assist in resolving classroom behavior problems.

Through June 30, 2016, when suspending a student in Grades 4-12 from class for committing an obscene act, engaging in habitual profanity or vulgarity, disrupting school activities, or otherwise willfully defying valid staff authority, the teacher of the class may require any parent/guardian who lives with the student to attend a portion of the school day in the class from which the student is being suspended, to assist in resolving the classroom behavior problems. (Education Code 48900.1)

Effective July 1, 2016, when suspending a student in any grade from class for committing an obscene act, engaging in habitual profanity or vulgarity, the teacher of the class may require any parent/guardian who lives with the student to attend a portion of the school day in the class from which the student is being suspended, to assist in resolving the classroom behavior problems. (Education Code 48900.1) The teacher of the class may also require any parent/guardian who lives with the student to attend a portion of the school day in the class to assist in resolving classroom behavior problems.

Teachers should reserve the option of required parental attendance for cases in which they have determined that it is the best strategy to promote positive interaction between the teacher and the student and his/her parents/guardians and to improve the student's behavior.

Any teacher requiring parental attendance pursuant to this policy shall apply the policy uniformly to all students within the classroom. (Education Code 48900.1)

When a teacher makes this request, the principal shall send the parent/guardian a written notice that the parent/guardian's attendance is requested pursuant to law. (Education Code 48900.1)

The notice shall specify that the attendance may be on either the date the student is scheduled to return to class or within one week thereafter.

This notice shall also:

1. Inform the parent/guardian when his/her presence is expected and by what means he/she may arrange an alternate date

2. State that if the parent/guardian does not have a means of transportation to school, he/she may ride the school bus with the student
3. Ask the parent/guardian to meet with the principal after the visit and before leaving school, as required by Education Code 48900.1

At the meeting with the student's parent/guardian, the principal or designee shall explain the district's and school's discipline policies, including the disciplinary strategies that may be used to achieve proper student conduct.

When a parent/guardian does not respond to the request to attend school, the principal or designee shall contact him/her by telephone, mail, or other method that maintains the confidentiality of the student's records.

(cf. 5125 - Student Records)

District regulations shall include procedures for implementing parental attendance requirements. Parents/guardians shall be notified of this policy prior to its implementation. (Education Code 48900.1)

### **Suspensions by Superintendent, Principal, or Designee**

The Board does not support a zero tolerance approach to discipline except where mandated by law. Schools may not adopt zero tolerance policies that conflict with District discipline policies. The Board desires that schools will adopt, engage, and implement positive approaches to addressing problem behavior prior to initiating the suspension of a student.

Suspension for a first time offense is limited to certain serious offenses (listed below in permissible and mandatory categories) or where it can be documented that the presence of a student causes a danger to persons.

#### *Suspension for Defiance*

Effective January 1, 2015, as provided in California Education Code section 48900(k), no student enrolled in grades T-Kindergarten through third grade may be suspended or expelled for disrupting school activities or willfully defying the authority of school personnel ("disruption and willful defiance") and no student regardless of grade may be expelled for willful defiance or disruption.

Effective July 1, 2016, no student enrolled in grades T-Kindergarten through twelve (TK-12) grades may be suspended or expelled for disrupting school activities or willfully defying the authority of school personnel. Suspension and expulsion shall not be imposed for a violation of Education Code section 48900(k), including disruption of school activities or willful defiance.

The District expects schools to develop appropriate interventions, for example, behavioral plans,

for students who engage in a pattern of defiant behavior. ~~The District discourages the imposition of suspension for defiance under any circumstance.~~

Defiance is when a student continues to disobey a school official, teacher, or administrator after having been taught the rules and expectations of the school and the student displays behavior that directly interferes with the rights of others to learn.

The Board will review data regarding suspensions for defiance ~~in Grades 4 through 12 within a year of adopting revisions to Board Policy 5144.1 in August 2015 and January 2016. If based on review of the data, it appears further steps should be undertaken to meet the goal of eliminating suspensions for defiance by July 1, 2016, the Board will direct the Superintendent to implement such additional measures to achieve the goal of no suspensions for defiance by July 1, 2016 and consider whether further steps should be undertaken with respect to suspensions for defiance.~~

#### Discipline and Intervention Matrix for Administrators

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~~Attached to this Administrative Regulation is the discipline and intervention matrix aligned to the District's Response to Intervention (RTI) framework and models a progressive and holistic approach to discipline. As provided in the Board Policy, each school is responsible for adopting strategies, programs and interventions within an RTI framework to facilitate a positive approach to behavior management. Even if suspension is appropriate, administrators must first consider whether other interventions should be used.~~

##### ~~*Where Suspension for First Offense Is Permitted*~~

~~The Principal or designee may suspend a student based on a determination that the student committed one of the following acts as a first offense (Education Code 48900.5(a)):~~

- ~~1. Caused, attempted, or threatened to cause physical injury to another person or willfully used force or violence upon another person except in self-defense;~~
- ~~2. Possessed, sold, or furnished a knife or other dangerous object without written permission to possess the item from a certificated school employee;~~
- ~~3. Unlawfully possessed, used, sold or otherwise furnished, or been under the influence of, a controlled substance, alcohol, or intoxicant;~~
- ~~4. Unlawfully offered, arranged, or negotiated to sell a controlled substance, alcoholic beverage, or intoxicant of any kind;~~
- ~~5. Committed or attempted to commit robbery; or~~
- ~~6. Where the student's presence causes a danger to persons.~~

~~An administrator shall have discretion on a case-by-case basis to suspend a student for the first offense of possession of an imitation firearm.~~

##### ~~*Where Suspension for First Offense Is Mandatory*~~

~~In addition, the Superintendent, principal, or designee shall immediately suspend and recommend a student for expulsion who has been found at school or at a school activity to be (Education Code 48915):~~

- ~~1. Possessing, as verified by a district employee, selling, or otherwise furnishing a firearm,~~

~~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. — Brandishing a knife as defined in Education Code 48915(g)~~

~~3. — Unlawfully selling a controlled substance listed in Health and Safety Code 11053-11058~~

~~4. — Committing or attempting to commit a sexual assault as defined in Penal Code 261, 266e, 286, 288, 288a, or 289, or committing a sexual battery as defined in Penal Code 243.4~~

~~5. — Possessing an explosive as defined in 18 USC 921~~

~~Except where suspension for a first offense is permitted or mandatory (as described above), in-school and out-of-school suspension and other sanctions that result in a student's loss of instruction shall only be imposed when the principal or designee has determined that other means of correction that are consistent with District policies and procedures have failed to bring about proper conduct. (Education Code 48900.5) As described in AR 5144, RTI interventions and other alternatives to suspension should be attempted and evaluated prior to referral from the classroom. In addition, the principal or designee shall document the other means of correction used and retain them in the student's record. (Education Code 48900.5)~~

~~Except where suspension for a first offense is permitted or mandatory (as described above), in-school and out-of-school suspension and other sanctions that result in a student's loss of instruction shall only be imposed when the principal or designee has determined that other means of correction that are consistent with District policies and procedures have failed to bring about proper conduct. (Education Code 48900.5) As described in AR 5144, RTI interventions and other alternatives to suspension should be attempted and evaluated prior to referral from the classroom. In addition, the principal or designee shall document the other means of correction used and retain them in the student's record. (Education Code 48900.5)~~

The Principal or designee shall complete the suspension form and record the suspension in the District's database.

(cf. 5125 - Student Records)

The Superintendent, principal, or designee may suspend a student from school for not more than five consecutive school days unless the suspension is extended pending expulsion. (Education Code 48911)

A student may be suspended from school for not more than 20 school days in any school year unless, for purposes of adjustment, the student enrolls in or is transferred to another regular school, an opportunity school, or continuation school or class, in which case suspension shall not exceed 30 days in any school year. However, this restriction on the number of days of suspension does not apply when the suspension is extended pending an expulsion. (Education Code 48903, 48911, 48912)

(cf. 5144.2 Suspension & Expulsion/Due Process (Students With Disabilities))  
(cf. 6184 - Continuation Education)

The district may count suspensions that occur while a student is enrolled in another school district toward the maximum number of days for which the student may be suspended in any school year. (Education Code 48903)

Suspensions shall be initiated according to the following procedures:

1. Informal Conference: Suspension shall be preceded by an informal conference conducted by the Superintendent, principal, or designee with the student and, whenever practicable, the teacher, supervisor, or school employee who referred the student to the principal. At the conference, the student shall be informed of the reason for the disciplinary action, presented with the evidence against him/her, and given the opportunity to present his/her version and evidence in support of his/her defense. (Education Code 48911)

This conference may be omitted if the Superintendent, principal, or designee determines that an emergency situation exists involving a clear and present danger to the lives, safety, or health of students or school personnel. If a student is suspended without this conference, both the parent/guardian and student shall be notified of the student's right to return to school for the purpose of the conference. The conference shall be held within two school days, unless the student waives his/her right to it or is physically unable to attend for any reason. In such a case, the conference shall be held as soon as the student is physically able to return to school. (Education Code 48911)

2. Administrative Actions: All requests for student suspension are to be processed by the principal or designee. All suspensions shall be recorded in the District database. A school employee shall report the suspension, including the name of the student and the cause for the suspension, to the Superintendent or designee. (Education Code 48911)

3. Notice to Parents/Guardians: At the time of the suspension, a school employee shall make a reasonable effort to contact the parent/guardian by telephone or in person. Whenever a student is suspended, the parent/guardian shall be notified in writing of the suspension. (Education Code 48911)

This notice shall state the specific offense committed by the student. (Education Code 48900.8)

In addition, the notice may state the date and time when the student may return to school. If school officials wish to ask the parent/guardian to confer regarding matters pertinent to the suspension, the notice may add that state law requires the parent/guardian to respond to such requests without delay.

4. Parent/Guardian Conference: Whenever a student is suspended, school officials may

meet with the parent/guardian to discuss the cause(s) and duration of the suspension, the school policy involved, and any other pertinent matter. (Education Code 48914)

Although the parent/guardian is required to respond without delay to a request for a conference about his/her child's behavior, no penalties may be imposed on the student for the failure of the parent/guardian to attend such a conference. The student may not be denied readmission solely because the parent/guardian failed to attend the conference. (Education Code 48911)

5. Extension of Suspension: If the Board is considering the expulsion of a suspended student from any school or the suspension of a student for the balance of the semester from continuation school, the Superintendent or Principal may, in writing, extend the suspension until such time as the Board has made a decision. (Education Code 48911)

Any extension of the original period of suspension shall be preceded by notice of such extension with an offer to hold a conference concerning the extension, giving the student an opportunity to be heard. This conference may be held in conjunction with a meeting requested by the student or parent/guardian to challenge the original suspension. Extension of the suspension may be made only if the Superintendent or Principal determines, following a meeting in which the student and the student's parent/guardian were invited to participate, that the student's presence at the school or at an alternative school would endanger persons or property or threaten to disrupt the instructional process. (Education Code 48911)

If the student involved is a foster youth, the Superintendent or designee shall notify the district liaison for foster youth of the need to invite the student's attorney and a representative of the appropriate county child welfare agency to attend the meeting. (Education Code 48853.5, 48911, 48918.1)

(cf. 6173.1 - Education for Foster Youth)

In addition to suspending a student, the Superintendent, principal, or designee may provide services or require the student to participate in an alternative disciplinary program designed to correct his/her behavior and keep him/her in school.

The student shall be responsible for contacting the school to receive assignments to be completed during the period of the suspension. The school shall make available all assignments and tests that the student will miss while suspended.

### **Suspension by the Board**

The Board may suspend a student for any of the acts listed in "Grounds for Suspension and Expulsion" above and within the limits specified in "Suspensions by Superintendent, Principal, or Designee" above. (Education Code 48912)

The Board may suspend a student enrolled in a continuation school or class for a period not

longer than the remainder of the semester if any of the acts listed in "Grounds for Suspension and Expulsion" occurred. The suspension shall meet the requirements of Education Code 48915. (Education Code 48912.5)

When the Board is considering a suspension, disciplinary action, or any other action (except expulsion) against any student, it shall hold a closed session if a public hearing would lead to disclosure of information violating a student's right to privacy under Education Code 49073-49079. (Education Code 35146, 48912)

(cf. 9321 - Closed Session Purposes and Agendas)

The Board shall provide the student and his/her parent/guardian with written notice. Upon receiving this notice, the student or parent/guardian may request a public meeting, and this request shall be granted if made in writing within 48 hours after receipt of the Board's notice. However, any discussion that conflicts with any other student's right to privacy still shall be held in closed session. (Education Code 35146, 48912)

### **Supervised Suspension Classroom**

A student for whom an expulsion action has not been initiated and who poses no imminent danger or threat to the school, students, or staff may be assigned to a supervised suspension classroom in a separate classroom, building, or site for the entire period of suspension. The following conditions shall apply: (Education Code 48911.1)

1. The supervised suspension classroom shall be staffed in accordance with law and by certificated employees.
2. The student shall have access to appropriate counseling services.
3. The supervised suspension classroom shall promote completion of schoolwork and tests missed by the student during the suspension.
4. The student shall be responsible for contacting his/her teacher(s) to receive assignments to be completed in the supervised suspension classroom except where otherwise set out in the student's Individualized Education Program (IEP) or Section 504 plan. The teacher(s) shall provide all assignments and tests that the student will miss while suspended. If no such work is assigned, the person supervising the suspension classroom shall assign schoolwork.

The Principal or designee shall complete the in-school suspension form and record the suspension in the District's database.

At the time a student is assigned to a supervised suspension classroom, the principal or designee shall notify the student's parent/guardian in person or by telephone. When the assignment is for longer than one class period, this notification shall be made in writing. (Education Code 48911.1)

## Involuntary Transfer

Effective January 1, 2015, the District may not involuntarily transfer a student in Grades TK-3<sup>rd</sup> grade to another school based on a finding of disruption of school activities or willfull defiance of the authority of school personnel (California Education Code section 48900(k)).

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Effective July 1, 2016, the District The Superintendent, Certificated Deputy Superintendent, or Certificated Associate Superintendents may not involuntarily transfer a student to another school based on a finding of disruption of school activities or willfull defiance of the authority of school personnel (California Education Code section 48900(k)).

Involuntary transfers may only occur following a recommendation for expulsion and after a hearing before the District's Disciplinary Hearing Panel (DHP) consistent with the requirements in Education Code section 48918 and the notice and hearing procedures set forth below for expulsions. that a student committed a violation of Education Code Section 48900 and either other means of correction fail to bring about student improvement, or the student's presenee creates a danger to other persons. Prior to such a finding, a student and his/her parent/guardian must be provided notice of the charges and an opportunity to present his/her side of the story. In addition, an involuntary transfer to a continuation school must be made pursuant to Education Code section 48432.5.

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## Expulsions

The Board shall expel, as required by law, any student found to have committed any offense listed below under "Mandatory Recommendation and Mandatory Expulsion" (see page 13). (Education Code 48915)

For all other grounds listed under "Grounds for Suspension and Expulsion," the Board shall order a student expelled upon the recommendation of the Superintendent, principal, or designee, only if the Board makes a finding of either or both of the following: (Education Code 48915(b) and (e))

1. That other means of correction 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

## Authority to Expel

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

The Board shall expel, as required by law, any student found to have committed any offense listed below under "Mandatory Recommendation and Mandatory Expulsion." (Education Code 48915)

For all other grounds listed above under "Grounds for Suspension and Expulsion," the Board shall order a student expelled upon the recommendation of the Superintendent, principal, or designee, only if the Board makes a finding of either or both of the following: (Education Code 48915(b) and (e))

1. That other means of correction are 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

**Recommendation for Expulsion Expected Unless It Is Not Appropriate or Alternative Means of Correction Would Address the Conduct**

Unless the Superintendent, principal, or designee determines that expulsion should not be recommended under the circumstances or that an alternative means of correction would address the conduct, he/she shall recommend a student's expulsion for any of the following acts: (Education Code 48915(a))

1. Causing serious physical injury to another person, except in self-defense
2. Possession of any knife as defined in Education Code 48915(g), explosive, or other dangerous object of no reasonable use to the student
3. Unlawful possession of any controlled substance as listed in Health and Safety Code 11053-11058, except for (a) the first offense for the possession of not more than one ounce of marijuana, other than concentrated cannabis, or (b) the student's possession of over-the-counter medication for his/her use or other medication prescribed for him/her by a physician
4. Robbery or extortion
5. Assault or battery, as defined in Penal Code 240 and 242, upon any school employee

In determining whether or not to recommend the expulsion of a student, the Superintendent, principal, or designee shall act as quickly as possible to ensure that the student does not lose instructional time. (Education Code 48915)

**Mandatory Recommendation and Mandatory Expulsion**

The Superintendent, principal, or designee shall recommend that the Board expel any student found at school or at a school activity to be: (Education Code 48915(c))

1. Possessing, as verified by a district employee, selling, or otherwise furnishing a firearm, unless the student had obtained prior written permission to possess the firearm from a certificated

school employee, with the principal or designee's concurrence

Possession of an imitation firearm, as defined in Education Code 48900(m), shall not be regarded as an offense requiring a mandatory recommendation for expulsion and mandatory expulsion. However, an administrator shall have discretion on a case-by-case basis to recommend expulsion for the possession of an imitation firearm.

2. Brandishing a knife as defined in Education Code 48915(g) at another person
3. Unlawfully selling a controlled substance listed in Health and Safety Code 11053-11058
4. Committing or attempting to commit a sexual assault as defined in Penal Code 261, 266c, 286, 288, 288a, or 289, or committing a sexual battery as defined in Penal Code 243.4
5. Possessing an explosive as defined in 18 USC 921

Upon finding that the student committed any of the above acts, the Board shall expel the student. (Education Code 48915)

#### **Student's Right to Expulsion Hearing**

Any student recommended for expulsion shall be entitled to a hearing to determine whether he/she should be expelled. The hearing shall be held within 30 school days after the Superintendent, principal, or designee determines that the student has committed one of the acts listed above under "Grounds for Suspension and Expulsion." (Education Code 48918(a))

The student is entitled to at least one postponement of an expulsion hearing for a period of not more than 30 calendar days. The request for postponement shall be in writing. Any subsequent postponement may be granted at the Board's discretion. (Education Code 48918(a))

If the Board finds it impractical during the regular school year to comply with these time requirements for conducting an expulsion hearing, the Superintendent or designee may, for good cause, extend the time period by an additional five school days. Reasons for the extension shall be included as a part of the record when the expulsion hearing is held. (Education Code 48918(a))

If the Board finds it impractical to comply with the time requirements of the expulsion hearing due to a summer recess of Board meetings of more than two weeks, the days during the recess shall not be counted as school days. The days not counted during the recess may not exceed 20 school days, as defined in Education Code 48925. Unless the student requests in writing that the expulsion hearing be postponed, the hearing shall be held not later than 20 calendar days prior to the first day of the next school year. (Education Code 48918(a))

Once the hearing starts, all matters shall be pursued with reasonable diligence and concluded without unnecessary delay. (Education Code 48918(a))

### **Rights of Complaining Witness**

An expulsion hearing involving allegations of sexual assault or sexual battery may be postponed for one school day in order to accommodate the special physical, mental, or emotional needs of a student who is the complaining witness. (Education Code 48918.5)

Whenever the Superintendent or designee recommends an expulsion hearing that addresses allegations of sexual assault or sexual battery, he/she shall give the complaining witness a copy of the district's suspension and expulsion policy and regulation and shall advise the witness of his/her right to: (Education Code 48918.5)

1. Receive five days' notice of his/her scheduled testimony at the hearing
2. Have up to two adult support persons of his/her choosing present at the hearing at the time he/she testifies
3. Have a closed hearing during the time he/she testifies

Whenever any allegation of sexual assault or sexual battery is made, the Superintendent or designee shall immediately advise complaining witnesses and accused students to refrain from personal or telephone contact with each other during the time when an expulsion process is pending. (Education Code 48918.5)

The rights of a complaining witness are further outlined in Administrative Regulation 5145.7 (Sexual Harassment).

### **Written Notice of the Expulsion Hearing**

Written notice of the expulsion hearing shall be forwarded to the student and the student's parent/guardian at least 10 calendar days before the date of the hearing. The notice shall include: (Education Code 48900.8, 48918(b))

1. The date and place of the hearing.
2. A statement of the specific facts, charges, and offense upon which the proposed expulsion is based.
3. A copy of district disciplinary rules which relate to the alleged violation.
4. Notification of the student's or parent/guardian's obligation, pursuant to Education Code 48915.1, to provide information about the student's status in the district to any other district in which the student seeks enrollment. This obligation applies when a student is expelled for acts other than those described in Education Code 48915(a) or (c).

(cf. 5119 - Students Expelled from Other Districts)

5. The opportunity for the student or the student's parent/guardian to appear in person or be represented by legal counsel or by a nonattorney advisor.

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.

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 student or student's parent/guardian to provide assistance at the hearing.

6. The right to inspect and obtain copies of all documents to be used at the hearing.

7. The opportunity to confront and question all witnesses who testify at the hearing.

8. The opportunity to question all evidence presented and to present oral and documentary evidence on the student's behalf, including witnesses.

#### **Additional Notice of Expulsion Hearing for Foster Youth**

At least 10 days prior to a hearing to determine if a student who is a foster youth as defined under Education Code 48853.5 should be expelled for an offense not requiring a mandatory recommendation for expulsion, the Superintendent or designee shall notify the student's attorney and a representative of an appropriate county child welfare agency. If the hearing is pursuant to an offense requiring a mandatory expulsion recommendation, the Superintendent or designee may provide the same notification. The notice shall be provided by the most cost-effective method possible, including by email or a telephone call. (Education Code 48918.1)

#### **Conduct of Expulsion Hearing**

1. Closed Session: Notwithstanding the provisions of Government Code 54953 and Education Code 35145, the Board shall conduct a hearing to consider the expulsion of the student in a session closed to the public unless the student requests in writing at least five days prior to the hearing that the hearing be a public meeting. If such a request is made, the meeting shall be public unless another student's privacy rights would be violated. (Education Code 48918(c))

Whether the expulsion hearing is held in closed or public session, the Board may meet in closed session to deliberate and determine whether or not the student should be expelled. If the Board admits any other person to this closed session, the parent/guardian, the student, and the counsel of the student also shall be allowed to attend the closed session. (Education Code 48918(c))

If a hearing that involves a charge of sexual assault or sexual battery is to be conducted in

public, a complaining witness shall have the right to have his/her testimony heard in closed session when testifying in public would threaten serious psychological harm to the witness and when 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 closed-circuit television. (Education Code 48918(c))

2. Record of Hearing: A record of the hearing shall be made and may be maintained by any means, including electronic recording, as long as a reasonably accurate and complete written transcription of the proceedings can be made. (Education Code 48918(g))

3. Subpoenas: Before commencing a student expulsion hearing, the Board may issue subpoenas, at the request of either the student or the Superintendent or designee, for the personal appearance at the hearing of any person who actually witnessed the action that gave rise to the recommendation for expulsion. After the hearing has commenced, the Board or the hearing officer or administrative panel may issue such subpoenas at the request of the student or the County Superintendent of Schools or designee. All subpoenas shall be issued in accordance with Code of Civil Procedure 1985-1985.2 and enforced in accordance with Government Code 11455.20. (Education Code 48918(i))

Any objection raised by the student or the Superintendent or designee to the issuance of subpoenas may be considered by the Board in closed session, or in open session if so requested by the student, before the meeting. The Board's decision in response to such an objection shall be final and binding. (Education Code 48918(i))

If the Board determines, or if the hearing officer or administrative panel finds and submits to the Board, that a witness would be subject to 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 described in item #4 below. (Education Code 48918(i))

4. Presentation of Evidence: Technical rules of evidence shall not apply to the expulsion hearing, but relevant evidence may be admitted and used as proof only if it is the kind of evidence on which reasonable persons can rely in the conduct of serious affairs. The decision of the Board to expel shall be supported by substantial evidence that the student committed any of the acts pursuant to Education Code 48900 and listed in "Grounds for Suspension and Expulsion" above. (Education Code 48918(h))

Findings of fact shall be based solely on the evidence at the hearing. Although no finding shall be based solely on hearsay, sworn declarations may be admitted as testimony from witnesses whose disclosure of their identity or testimony at the hearing may subject them to an unreasonable risk of physical or psychological harm. (Education Code 48918(f))

In cases where a search of a student's person or property has occurred, evidence describing the reasonableness of the search shall be included in the hearing record.

5. Testimony by Complaining Witnesses: The following procedures shall be observed when a hearing involves allegations of sexual assault or sexual battery by a student: (Education Code 48918, 48918.5)

a. Any complaining witness shall be given five days' notice before being called to testify.

b. Any complaining witness shall be entitled to have up to two adult support persons, including, but not limited to, a parent/guardian or legal counsel, present during his/her testimony.

c. Before a complaining witness testifies, support persons shall be admonished that the hearing is confidential.

d. The person presiding over the hearing may remove a support person whom he/she finds is disrupting the hearing.

e. If one or both support persons are also witnesses, the hearing shall be conducted in accordance with Penal Code 868.5.

f. Evidence of specific instances of prior sexual conduct of a complaining witness shall be presumed inadmissible and shall not be heard unless the person conducting the hearing determines that extraordinary circumstances require the evidence to be heard. Before such a determination is made, the complaining witness shall be given notice and an opportunity to oppose the introduction of this evidence. In the hearing on the admissibility of this 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 a complaining witness shall not be admissible for any purpose.

g. In order to facilitate a free and accurate statement of the experiences of the complaining witness and to prevent discouragement of complaints, the district shall provide a nonthreatening environment.

(1) The district shall provide a room separate from the hearing room for the use of the complaining witness before and during breaks in testimony.

(2) At 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/she may leave the hearing room.

(3) The person conducting the hearing may:

(a) Arrange the seating within the hearing room so as to facilitate a less intimidating environment for the complaining witness

(b) Limit the time for taking the testimony of a complaining witness to the hours he/she is normally in school, if there is no good cause to take the testimony during other hours

(c) Permit one of the support persons to accompany the complaining witness to the witness stand

6. Decision: The Board's decision as to whether to expel a student shall be made within 40 school days after the student is removed from his/her school of attendance, unless the student requests in writing that the decision be postponed. (Education Code 48918(a))

**Alternative Expulsion Hearing: Hearing Officer or Administrative Panel**

Instead of conducting an expulsion hearing itself, the Board may contract with the county hearing officer or with the Office of Administrative Hearings of the State of California for a hearing officer. Alternatively, the Board may appoint an impartial administrative panel composed of three or more certificated personnel, none of whom shall be members of the Board or on the staff of the school in which the student is enrolled. (Education Code 48918(d))

A hearing conducted by the hearing officer or administrative panel shall conform to the same procedures applicable to a hearing conducted by the Board as specified above in "Conduct of Expulsion Hearing," including the requirement to issue its decision within 40 school days of the student's removal from school, unless the student requests that the decision be postponed. (Education Code 48918(a) and (d))

The hearing officer or administrative panel shall, within three school days after the hearing, determine whether to recommend expulsion of the student to the Board. If expulsion is not recommended, the expulsion proceeding shall be terminated and the student shall be immediately reinstated and permitted to return to the classroom instructional program from which the expulsion referral was made, unless the parent, guardian, or responsible adult of the pupil requests another school placement in writing. Before the placement decision is made by the parent, guardian, or responsible adult, the superintendent of schools or the superintendent's designee shall consult with school district personnel, including the pupil's teachers, and the parent, guardian, or responsible adult regarding any other school placement options for the pupil in addition to the option to return to his or her classroom instructional program from which the expulsion referral was made. If the hearing officer or administrative panel finds that the pupil committed any of the acts specified in subdivision (c) of Section 48915, but does not recommend expulsion, the pupil shall be immediately reinstated and may be referred to his or her prior school or another comprehensive school, or, pursuant to the procedures set forth in Section 48432.5, a continuation school of the school district. The decision not to recommend expulsion shall be final. The Superintendent or designee shall place the student in a classroom instructional program, any other instructional program, a rehabilitation program, or any combination of these programs after consulting with district staff, including the student's teachers, and with the student's parent/guardian. The decision to not recommend expulsion shall be final. (Education Code 48918(e))

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If expulsion is recommended, findings of fact in support of the recommendation shall be prepared and submitted to the Board. All findings of fact and recommendations shall be based

solely on the evidence presented at the hearing. The Board may accept the recommendation based either upon a review of the findings of fact and recommendations submitted or upon the results of any supplementary hearing the Board may order. (Education Code 48918(f))

In accordance with Board policy, the hearing officer or administrative panel may recommend that the Board suspend the enforcement of the expulsion for a period of one year. (Education Code 48917, 48918)

### **Final Action by the Board**

Whether the expulsion hearing is conducted in closed or public session by the Board, a hearing officer, or an administrative panel, the final action to expel shall be taken by the Board at a public meeting. (Education Code 48918(j))

(cf. 9321.1 - Closed Session Actions and Reports)

If the Board conducts the hearing and reaches a decision not to expel, this decision shall be final and the student shall be reinstated immediately.

Upon ordering an expulsion, the Board shall set a date when the student shall be reviewed for readmission to a school within the district. For a student expelled for any act listed under "Mandatory Recommendation and Mandatory Expulsion" above, this date shall be one year from the date the expulsion occurred, except that the Board may set an earlier date on a case-by-case basis. For a student expelled for other acts, this date shall be no later than the last day of the semester following the semester in which the expulsion occurred. If an expulsion is ordered during summer session or the intersession period of a year-round program, the Board shall set a date when the student shall be reviewed for readmission not later than the last day of the semester following the summer session or intersession period in which the expulsion occurred. (Education Code 48916)

At the time of the expulsion order, the Board shall recommend a plan for the student's rehabilitation, which may include: (Education Code 48916)

1. Periodic review, as well as assessment at the time of review, for readmission
2. Recommendations for improved academic performance, tutoring, special education assessments, job training, counseling, employment, community service, or other rehabilitative programs

With parent/guardian consent, students who have been expelled for reasons relating to controlled substances or alcohol may be required to enroll in a county-sponsored drug rehabilitation program before returning to school. (Education Code 48916.5)

### **Written Notice to Expel**

The Superintendent or designee shall send written notice of the decision to expel to the student or parent/guardian. This notice shall include the following:

1. The specific offense committed by the student for any of the causes for suspension or expulsion listed above under "Grounds for Suspension and Expulsion" (Education Code 48900.8)
2. The fact that a description of readmission procedures will be made available to the student and his/her parent/guardian (Education Code 48916)
3. Notice of the right to appeal the expulsion to the County Board of Education (Education Code 48918)
4. Notice of the alternative educational placement to be provided to the student during the time of expulsion (Education Code 48918)
5. Notice of the student's or parent/guardian's obligation to inform any new district in which the student seeks to enroll of the student's status with the expelling district, pursuant to Education Code 48915.1 (Education Code 48918)

#### **Decision Not to Enforce Expulsion Order**

In accordance with Board policy, when deciding whether to suspend the enforcement of an expulsion order, the Board shall take into account the following criteria:

1. The student's pattern of behavior
2. The student's attitude toward the misconduct and his/her willingness to follow a rehabilitation program

The suspension of the enforcement of an expulsion shall be governed by the following:

1. The Board may, as a condition of the suspension of enforcement, assign the student to a school, class, or program appropriate for the student's rehabilitation. This rehabilitation program may provide for the involvement of the student's parent/guardian in the student's education. However, a parent/guardian's refusal to participate in the rehabilitation program shall not be considered in the Board's determination as to whether the student has satisfactorily completed the rehabilitation program. (Education Code 48917)
2. During the period when enforcement of the expulsion order is suspended, the student shall be on probationary status. (Education Code 48917)
3. The suspension of the enforcement of an expulsion order may be revoked by the Board if the student commits any of the acts listed under "Grounds for Suspension and Expulsion" above or violates any of the district's rules and regulations governing student conduct. (Education Code

48917)

4. When the suspension of enforcement of an expulsion order is revoked, a student may be expelled under the terms of the original expulsion order. (Education Code 48917)

5. Upon satisfactory completion of the rehabilitation assignment, the Board shall reinstate the student in a district school. Upon reinstatement, the Board may order the expunging of any or all records of the expulsion proceedings. (Education Code 48917)

6. The Superintendent or designee shall send written notice of any decision to suspend the enforcement of an expulsion order during a period of probation to the student or parent/guardian. The notice shall inform the parent/guardian of the right to appeal the expulsion to the County Board, the alternative educational placement to be provided to the student during the period of expulsion, and the student's or parent/guardian's obligation to inform any new district in which the student seeks to enroll of his/her status with the expelling district, pursuant to Education Code 48915.1(b). (Education Code 48918(j))

7. Suspension of the enforcement of an expulsion order shall not affect the time period and requirements for the filing of an appeal of the expulsion order with the County Board. (Education Code 48917)

#### **Right to Appeal**

The student or parent/guardian is entitled to file an appeal of the Board's decision with the County Board. The appeal must be filed within 30 days of the Board's decision to expel, even if the expulsion order is suspended and the student is placed on probation. (Education Code 48919)

The student shall submit a written request for a copy of the written transcripts and supporting documents from the district simultaneously with the filing of the notice of appeal with the County Board. The district shall provide the student with these documents within 10 school days following the student's written request. (Education Code 48919)

#### **Notification to Law Enforcement Authorities**

The Oakland School Police Department (OSPD) exists to support the educational mission of the District by ensuring the safety and security of the District's students, staff, and property.

Prior to the suspension or expulsion of any student, the principal or designee shall notify appropriate city or county law enforcement authorities of any student acts of assault which may have violated Penal Code 245. (Education Code 48902)

The principal or designee also shall notify appropriate city or county law enforcement authorities of any student acts which may involve the possession or sale of narcotics or of a controlled substance. In addition, law enforcement authorities shall be notified regarding any acts by

students regarding the possession, sale, or furnishment of firearms, explosives, or other dangerous weapons in violation of Education Code 48915(c)(1) or (5) or Penal Code 626.9 and 626.10. (Education Code 48902)

Within one school day after a student's suspension or expulsion, the principal or designee shall notify appropriate city or county law enforcement authorities, by telephone or other appropriate means, of any student acts which may violate Education Code 48900(c) or (d), relating to the possession, use, offering, or sale of controlled substances, alcohol, or intoxicants of any kind. (Education Code 48902)

### **Post-Expulsion Placements**

The Board shall refer expelled students to a program of study that is: (Education Code 48915, 48915.01)

1. Appropriately prepared to accommodate students who exhibit discipline problems
2. Not provided at a comprehensive middle, junior, or senior high school or at any elementary school, unless the program is offered at a community day school established at such a site
3. Not housed at the school site attended by the student at the time of suspension

(cf. 6158 - Independent Study)  
(cf. 6185 - Community Day School)

When the placement described above is not available and when the County Superintendent so certifies, students expelled for acts described in items #6-13 and #20-22 under "Grounds for Suspension and Expulsion" above may be referred to a program of study that is provided at another comprehensive middle, junior, or senior high school or at an elementary school. (Education Code 48915)

The program for a student expelled from any of grades K-6 shall not be combined or merged with programs offered to students in any of grades 7-12. (Education Code 48916.1)

### **Readmission After Expulsion**

Readmission procedures shall be as follows:

1. On the date set by the Board when it ordered the expulsion, the district shall consider readmission of the student. (Education Code 48916)
2. The Superintendent or designee shall hold a conference with the parent/guardian and the student. At the conference, the student's rehabilitation plan shall be reviewed and the Superintendent or designee shall verify that the provisions of this plan have been met. School

regulations shall be reviewed and the student and parent/guardian shall be asked to indicate in writing their willingness to comply with these regulations.

3. The Superintendent or designee shall transmit to the Board his/her recommendation regarding readmission. The Board shall consider this recommendation in closed session if information would be disclosed in violation of Education Code 49073-49079. If a written request for open session is received from the parent/guardian or adult student, it shall be honored.

4. If the readmission is granted, the Superintendent or designee shall notify the student and parent/guardian, by registered mail, of the Board's decision regarding readmission.

5. The Board may deny readmission only if it finds that the student has not satisfied the conditions of the rehabilitation plan or that the student continues to pose a danger to campus safety or to other district students or employees. (Education Code 48916)

6. If the Board denies the readmission of a student, the Board shall determine either to continue the student's placement in the alternative educational program initially selected or to place the student in another program that serves expelled students, including placement in a county community school. (Education Code 48916)

7. The Board shall provide written notice to the expelled student and parent/guardian describing the reasons for denying readmittance into the regular program. This notice shall indicate the Board's determination of the educational program which the Board has chosen. The student shall enroll in that program unless the parent/guardian chooses to enroll the student in another school district. (Education Code 48916)

No student shall be denied readmission into the district based solely on the student's arrest, adjudication by a juvenile court, formal or informal supervision by a probation officer, detention in a juvenile facility, enrollment in a juvenile school, or other such contact with the juvenile justice system. (Education Code 48645.5)

#### **Maintenance of Records**

The district shall maintain a record of each suspension and expulsion, including its specific cause(s). (Education Code 48900.8)

Expulsion records of any student shall be maintained in the student's mandatory interim record, and sent to any school in which the student subsequently enrolls upon written request by that school. (Education Code 48918(k))

The Superintendent or designee shall, within five working days, honor any other district's request for information about an expulsion from this district. (Education Code 48915.1)

(cf. 5119 - Students Expelled from Other Districts)

## Outcome Data

### Outcome Data

The Superintendent or designee shall maintain the following data and report such data annually to the California Department of Education, using forms supplied by the California Department of Education: (Education Code 48900.8, 48916.1)

1. The number of students recommended for expulsion
2. The specific grounds for each recommended expulsion
3. Whether the student was subsequently expelled
4. Whether the expulsion order was suspended
5. The type of referral made after the expulsion
6. The disposition of the student after the end of the expulsion period

### Public Reporting of Discipline Data

The Superintendent or designee shall ensure that the following data is publicly available on the District's public website twice annually, within 60 days after the completion of each semester:

1. The aggregate number and rates of office referrals, teacher suspensions, supervised in-school and out-of-school suspensions, involuntary transfers, expulsion referrals, expulsions, on-campus citations, and school-based arrests (from both OPD and OSPD), and four-year graduation and drop-out rates, disaggregated by all subgroups, including race, gender, ethnicity, English Language Learner status, socio-economic status, foster youth, homeless youth, and disability and by offense for the district and by school-site.
2. The number of instructional days and ADA funding lost to suspensions, transfers, and expulsions.
3. The school sites to which students were transferred after the Disciplinary Review Hearing procedure or through any involuntary transfer process, whether they enrolled subsequently, and the outcomes for such students, including, but not limited to, graduation and drop-out rates.
4. In reporting such data, the privacy of individual students and teachers shall be protected. Data will not be disaggregated in any manner that could reveal student identity to the public or to knowledgeable members of the school community. The data shall be reported for the district as a whole and for each school-site.

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5. The procedures shall also include requirements that appropriate district and school officials regularly review this data and take action to address disparities or disproportionate use of punitive discipline measures for particular subgroups.

#### **Convene Safe And Strong Schools Sub-Committee**

The Superintendent shall convene a Safe and Strong Schools sub-committee as part of the Pathway to Excellence Strategic Plan Quality Community Schools Committee that will include parents, students, representatives from community organizations, teachers, administrators and partner organizations. The sub-committee will meet at least twice a year, one meeting to occur in January to review the annual report to OCR that is submitted in the fall of the prior year and review the District's progress in successful implementation of RJ, PBIS and Manhood Development programs and the Three Year Plan ("Transforming School Culture" Three Year Plan, OCR Compliance Review No. 09125001); and one meeting in October to review 1) the discipline data from the prior school year, 2) the District's progress in successful implementation of RJ, PBIS and Manhood Development programs and the Three Year Plan ("Transforming School Culture" Three Year Plan, OCR Compliance Review No. 09125001), and 3) through June 30, 2016, data regarding suspensions for defiance in Grades 4 through 12. In reviewing the suspension for defiance data, the sub-committee shall consider whether to recommend that the Superintendent undertake additional measures if it appears the District is not on target for the successful elimination of willful defiance as a basis for suspension or expulsion for all grade levels TK-12 effective July 1, 2016.

#### **Annual Community Forum**

The Superintendent will convene a community forum in the Spring of 2016 and 2017 to update the community on transforming school climate and disparities in school discipline, including but not limited to the implementation of the VRP and the Three Year Plan and to establish a dialogue with the community about the types of non-policing resources and interventions needed to keep schools strong and safe and students out of the juvenile justice system. The Superintendent will report the results of the Community Forum to the Board during the Superintendent's report as a part of a regularly scheduled Board meeting. The need to continue an annual forum will be considered as part of the districts exit plan from the VRP with the OCR in 2017.

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#### **Expungement of Student Disciplinary Records**

As provided in Board Policy 5144.3, a student, parent, guardian, appointed advocate on behalf of the student, or Superintendent on behalf of a student, may apply for expungement of student disciplines record which meet the criteria set forth in BP 5144.3.

~~In addition, the Superintendent or designee shall disaggregate student data collected based on race, color, nationality, religion, disability, status as an English Language Learner, and other~~

~~categories protected from discrimination under the law. In particular, the Superintendent or designee shall disaggregate student data for the district's under-served populations, including African American, Latino, and English Language Learner students as well as students with disabilities.~~

### Complaint Process

~~The Superintendent shall develop a complaint form to allow members of the school community and public to raise concerns if restorative justice or another restorative approach is not available at a school site as an alternative to suspension. The complaint form will be available on the District's website, the District Discipline Office and the District Ombudsperson's Office. The Ombudsperson shall investigate such complaints and within 90 days of complaint submission develop a plan with the school site for addressing the complaint and provide a written response to the complaining party.~~  
Effective July 1, 2014

8/25/04; 4/23/14; 5/13/15

### Attachment

Student Discipline and Intervention Matrix dated April 7, 2015

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### Student Discipline and Intervention Matrix

<u>Behavior/Offense</u>	<u>Recommended Intervention</u>	<u>Suspension</u>	<u>Referral for Expulsion</u>	<u>Noticeto Police</u>
<b>Type I (Classroom-Managed Behaviors)</b>				
Dress code violation	Teachers are expected to complete at least 3 Pre-Referral Interventions from the Universal Referral Form (URF) before an office referral (see Pre-Referral Intervention Guide for details).	No	No	No
Picking on, bothering or distracting other students				
Technology violation (i.e. using cell phone in class without permission)				
Use of profanity or vulgarity (not directed towards adults)				
Failure to follow directions (all grades)				
Cutting class or repeatedly truant				
Possessed or used tobacco				
<b>Type II</b>				
Repeated Type I offense	One or more appropriate interventions from the Post-Referral Guide (also listed at the bottom of the URF).	No	No	No
Repeated failure to follow directions (K-3) (suspension never permitted for K-3)				
Repeated failure to follow directions (4-12)		Discouraged and not permitted unless tiered interventions have been attempted and failed. (Note that out-of-school suspensions for defiance will be phased out by 2017.)		
Use of profanity toward adults				
Trespassing		Sexual Harassment Optional 1 day		
Bullying/Harassment Level 1 (teasing, name calling, excluding, giving dirty looks, gossiping)				
Sexual Harassment Level 1 (verbal, written, or electronic comments that are sexually offensive or degrading)				
Intentional destruction of school property including graffiti or tagging		Optional 1 day		
Possession of firecrackers (non-projectile)		Optional 1 day		
False activation of fire alarm		Optional 1 day		
<b>Type III</b>				

<u>Behavior/Offense</u>	<u>Recommended Intervention</u>	<u>Suspension</u>	<u>Referral for Expulsion</u>	<u>Noticeto Police</u>
Repeated Type II	Parent consultation and one or more appropriate interventions from the Post-Referral Intervention Guide.	Discouraged and not permitted unless tiered interventions have been attempted and failed. K-3 students may not be suspended for defiance.	No	No
Failure to follow directions when it causes an unsafe situation (4-12) (suspension never permitted for K-3)		Case-by-case basis depending on safety issue or mitigating factors	No	No
Bullying/Harassment Level 2 (bullying based on race, disability, sexuality, and other protected classes, <u>or</u> pushing, poking, tripping, shoving or making threats)		Optional 1-2 days (except that K-4 students may not be suspended for harassment or sexual harassment)	Discouraged unless secondary factors present*	
Sexual Harassment Level 2 (touching that is uncomfortable, embarrassing, and/or offensive but does not arise to the level of sexual battery)				
Stole or attempted to steal school or private property (not directly from a person but from an unattended location such as a backpack)				
Possessed or sold drug paraphernalia				
Engaging in sexual behavior on campus				
Caused, attempted to cause, or threatened to cause physical injury to another person (not involving threats re weapons)				If force likely to cause great bodily injury or a deadly weapon was involved
Fighting Level 1 (mutual combat resulting in minor injuries such as cuts, scrapes) or instigating a physical altercation				
Intoxication	Parent consultation plus referral for substance abuse assessment.	No unless student refuses substance abuse assessment	No	No

<u>Behavior/Offense</u>	<u>Recommended Intervention</u>	<u>Suspension</u>	<u>Referral for Expulsion</u>	<u>Noticeto Police</u>
<b>Type IV</b>				
Fighting level 2 (one-sided fighting resulting in minor injuries such as cuts, scrapes)	Parent conference <u>plus one</u> or more appropriate interventions from the Post-Referral Guide.	Optional; no more than 3 days (except that K-4 students may not be suspended for harassment or sexual harassment)	Expulsion permitted if secondary factors present	If force used was likely to cause great bodily injury or a deadly weapon was involved
Bullying Level 3 (severe or pervasive conduct, including online conduct, that has a substantially detrimental effect on physical or mental health or as described in 48900(r))				No (but note that a sexual battery must be reported to police)
Sexual Harassment Level 3 (severe or pervasive conduct of a sexual nature as described in 48900.2)				No
Possessing and/or using marijuana (with no intent to sell)			Expulsion not permitted for first offense of possession of one ounce of marijuana; expulsions permitted for repeated offenses if tiered interventions have failed or student poses danger	No
Possession of an imitation firearm such as a BB gun			Case-by-case basis depending on safety threat or mitigating factors	Case-by-case basis depending on safety threat or mitigating

<u>Behavior/Offense</u>	<u>Recommended Intervention</u>	<u>Suspension</u>	<u>Referral for Expulsion</u>	<u>Noticeto Police</u>
			factors	
Committed harassment, threats, or intimidation against a student witness (including gang related behavior)		Optional, up to 5 days	Expulsion discretionary	Depends on nature of threats
Threatening to cause physical injury with a weapon				No unless in possession of a weapon at the time of the threat
<b>Type V (Expulsion "Expected")</b>				
Possession of a knife, taser, stun gun, or other dangerous object (brandishing a knife and possessing firearm/explosive listed separately)	Welcome circle to develop reentry plan including referral to COST.	Expected, 5 days if referring for expulsion	Expected, unless administrator determines that expulsion should not berecommended under the circumstances or an alternative means ofcorrection would address the conduct	Yes
Caused <u>serious</u> physical injury to another person except in self-defense (or Fighting Level 3)				If force used was likely to cause great bodily injury or a deadly weapon was involved
Committed or threatening an assault or battery on a school employee				Yes
Committed robbery (taking property directly from someone)				Yes
Possessing and/or using a controlled substance other than marijuana				Yes
<b>Type VI (The "Big 5" Offenses)</b>				
Committed or attempted sexual assault or battery	Welcome circle to develop reentry plan including referral to COST.	Mandatory, 5 days	Mandatory	Yes
Selling a controlled substance <sup>1</sup> (see note below)				

<sup>1</sup> Administrators who find an ounce or less of marijuana on a student should presume that the student had the marijuana for their own consumption (see Type IV offense) and not for the purpose of selling.

<u>Behavior/Offense</u>	<u>Recommended Intervention</u>	<u>Suspension</u>	<u>Referral for Expulsion</u>	<u>Noticeto Police</u>
Possessing, selling, or furnishing a firearm				
Brandishing a knife				
Possession of an explosive				