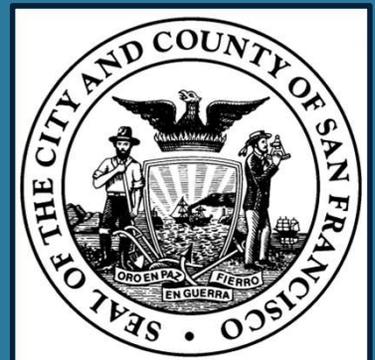


SCHOOL DISCIPLINE

SAN FRANCISCO EDUCATION LAW CLINIC
WORKSHOP NO. 3, DECEMBER 16, 2013

Organized by the Lawyers' Committee for Civil Rights of the San Francisco Bay Area, in partnership with Coleman Advocates for Children & Youth; Mo' MAGIC, the San Francisco Human Rights Commission, and the San Francisco Public Defender's Office

LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
OF THE SAN FRANCISCO BAY AREA

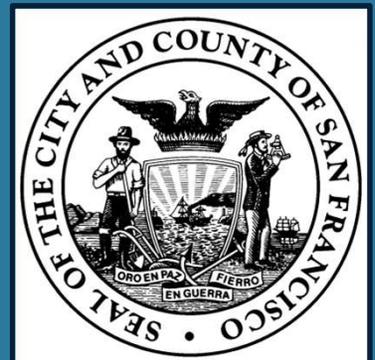


WHAT IS THE EDUCATION LAW CLINIC?

- PROVIDES SUPPORT TO COMMUNITY ORGANIZATIONS TO ENHANCE THEIR CAPACITY TO IDENTIFY AND ADDRESS EDUCATION-RELATED LEGAL ISSUES
- PROVIDES FREE EDUCATION-RELATED LEGAL SERVICES FOR FAMILIES

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LAWYERS' COMMITTEE FOR
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WORKSHOP No. 1 [Dec. 2, 2013]

- REFERRAL AND ASSESSMENT FOR SPECIAL EDUCATION

WORKSHOP No. 2 [Dec. 9, 2013]

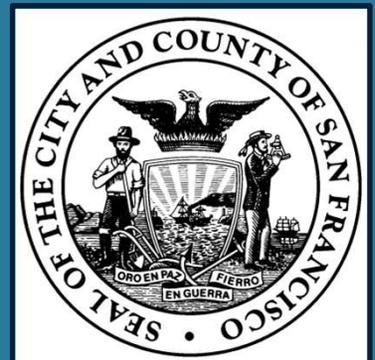
- INDIVIDUALIZED EDUCATION PROGRAMS (IEPs)
- SCHOOL DISCIPLINE FOR STUDENTS IN SPECIAL EDUCATION

WORKSHOP No. 3 [Dec. 16, 2013]

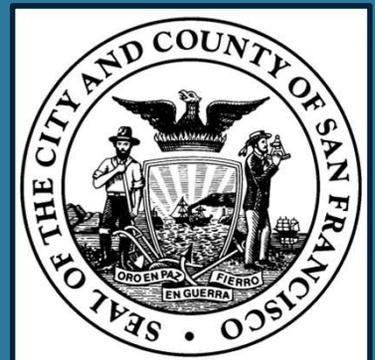
- SCHOOL DISCIPLINE

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WHY DOES SCHOOL DISCIPLINE MATTER?

DISTINCTION BETWEEN SUSPENSION & EXPULSION

GROUNDS FOR SUSPENSION & EXPULSION

PROCEDURAL REQUIREMENTS

REFERRAL TO LAW ENFORCEMENT

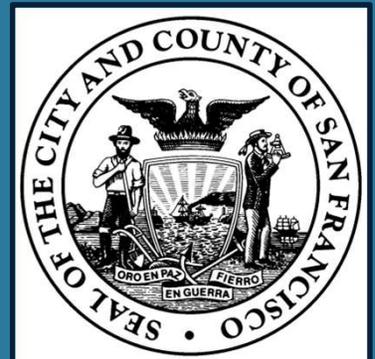
ALTERNATIVE EDUCATION

IN-SCHOOL & INFORMAL SUSPENSIONS

ADDITIONAL RESOURCES

Q&A

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CIVIL RIGHTS
OF THE SAN FRANCISCO BAY AREA



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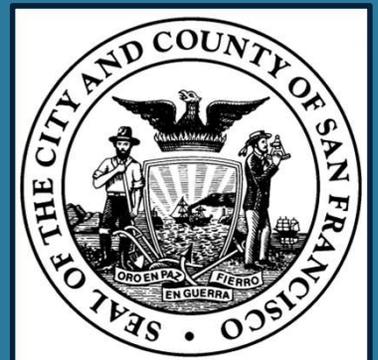
ALTERNATIVE EDUCATION

IN-SCHOOL & INFORMAL SUSPENSIONS

ADDITIONAL RESOURCES

Q&A

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CIVIL RIGHTS
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WHY DOES SCHOOL DISCIPLINE MATTER?

The traditional model of school discipline focuses on removing a student who has violated the rules, either temporarily or permanently (suspensions, expulsions, and involuntary transfer).



WHY DOES SCHOOL DISCIPLINE MATTER?

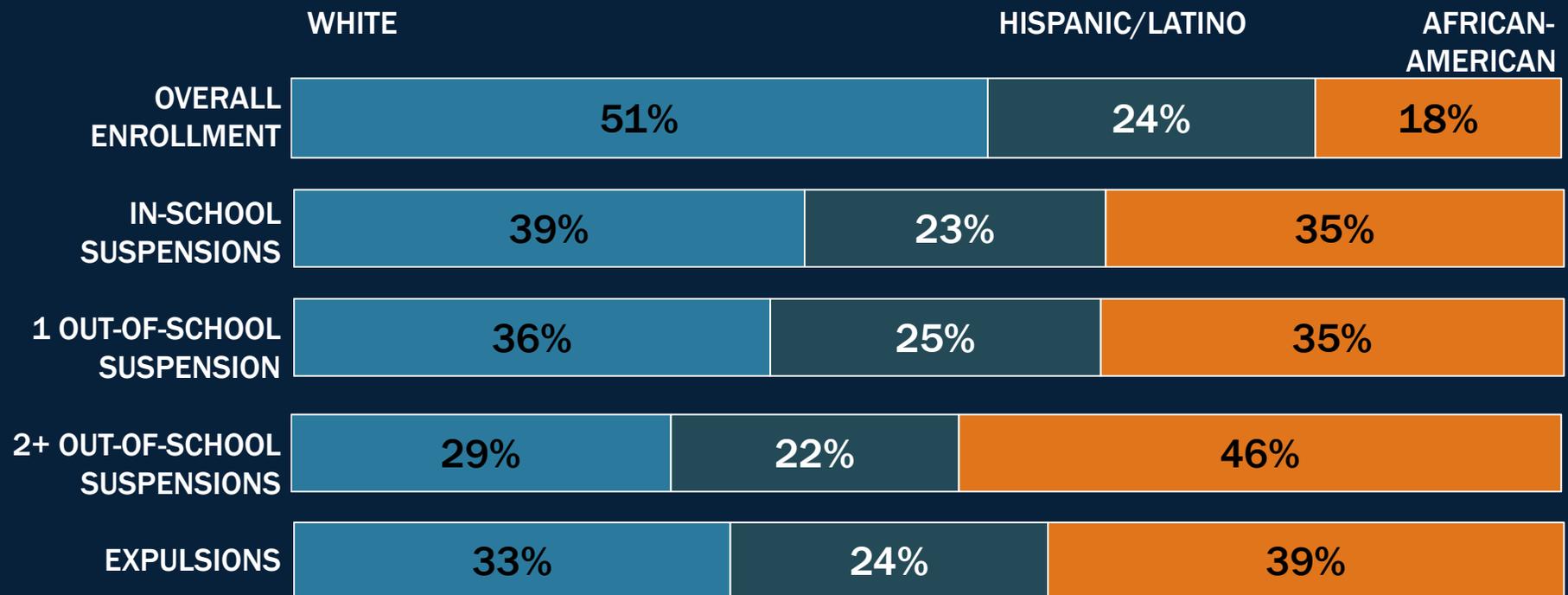
The traditional model of school discipline focuses on removing a student who has violated the rules, either temporarily or permanently (suspensions, expulsions, and involuntary transfer).

However, more than two decades of research have confirmed that EXCLUSIONARY DISCIPLINE:

- Has a serious and negative impact on student achievement, especially in middle school and high school
- Results in the alienation of students
- Increases the likelihood of students dropping out
- Increases the likelihood of students' involvement in the juvenile justice and/or adult criminal justice system
- **Does not improve student behavior and often, in fact, exacerbates it**

WHY DOES SCHOOL DISCIPLINE MATTER?

Moreover, students of color and students with disabilities face discipline at much higher rates than their white peers, even for the same infractions.



Based on national data

WHY DOES SCHOOL DISCIPLINE MATTER?

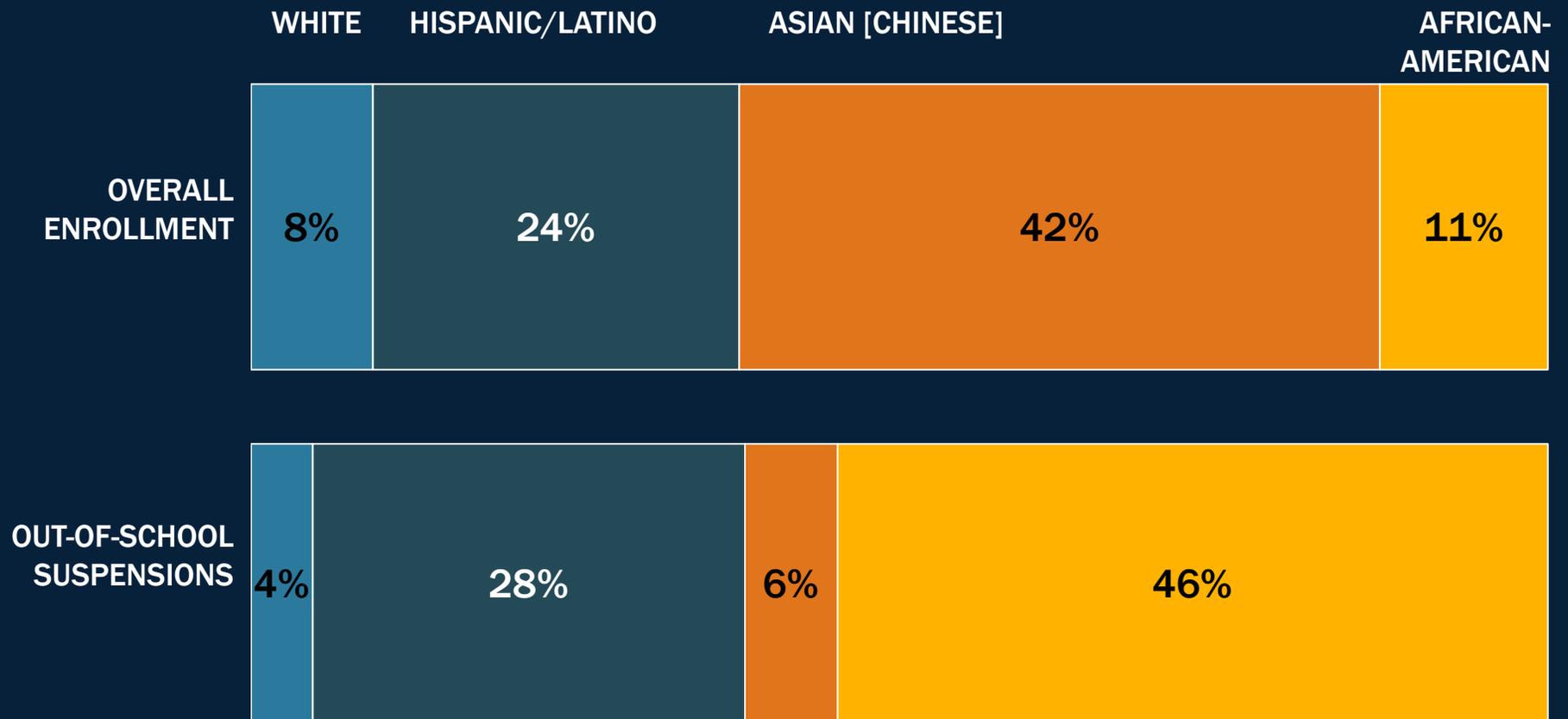
Moreover, students of color and students with disabilities face discipline at much higher rates than their white peers, even for the same infractions.

- In California, African-American students make up 6.5 percent of total enrollment, but 19 percent of suspensions
- White students make up 26 percent of total enrollment, but just 20 percent of suspensions
- Hispanic students make up 52 percent of total enrollment, and 54 percent of suspensions

When disciplined, students of color receive, on average, harsher penalties than their white peers for the same infractions.

WHY DOES SCHOOL DISCIPLINE MATTER?

SFUSD (High Schools)



Based on SFUSD data

WHY DOES SCHOOL DISCIPLINE MATTER?

Zero tolerance policies, “get tough” punishments, and school removals fail schools and students – and disproportionately so for students of color and students with disabilities.



WHY DOES SCHOOL DISCIPLINE MATTER?

DISTINCTION BETWEEN SUSPENSION & EXPULSION

GROUNDS FOR SUSPENSION & EXPULSION

PROCEDURAL REQUIREMENTS

REFERRAL TO LAW ENFORCEMENT

ALTERNATIVE EDUCATION

IN-SCHOOL & INFORMAL SUSPENSIONS

ADDITIONAL RESOURCES

Q&A

WHY DOES SCHOOL DISCIPLINE MATTER?

DISTINCTION BETWEEN SUSPENSION & EXPULSION

GROUNDS FOR SUSPENSION & EXPULSION

PROCEDURAL REQUIREMENTS

REFERRAL TO LAW ENFORCEMENT

ALTERNATIVE EDUCATION

IN-SCHOOL & INFORMAL SUSPENSIONS

ADDITIONAL RESOURCES

Q&A

DISTINCTION BETWEEN SUSPENSION & EXPULSION

SUSPENSION

- Temporary removal of a child from school for a violation of school policies
- May be imposed by teacher or, more often, by principal
- Generally can last up to 5 consecutive school days



EXPULSION

- A more permanent removal of a child from school for a more serious violation of school policies
- Generally recommended by principal and often follows a suspension
- Generally can last no longer than 1 year from date of expulsion

WHY DOES SCHOOL DISCIPLINE MATTER?

DISTINCTION BETWEEN SUSPENSION & EXPULSION

GROUNDS FOR SUSPENSION & EXPULSION

PROCEDURAL REQUIREMENTS

REFERRAL TO LAW ENFORCEMENT

ALTERNATIVE EDUCATION

IN-SCHOOL & INFORMAL SUSPENSIONS

ADDITIONAL RESOURCES

Q&A

WHY DOES SCHOOL DISCIPLINE MATTER?

DISTINCTION BETWEEN SUSPENSION & EXPULSION

GROUNDS FOR SUSPENSION & EXPULSION

PROCEDURAL REQUIREMENTS

REFERRAL TO LAW ENFORCEMENT

ALTERNATIVE EDUCATION

IN-SCHOOL & INFORMAL SUSPENSIONS

ADDITIONAL RESOURCES

Q&A

GROUNDS FOR SUSPENSION & EXPULSION

- By law, a student can only be suspended or expelled for certain kinds of conduct, listed in the student/parent handbook and in the California Education Code (§§ 48900, 48900.2, 48900.3, 48900.4, and 48900.7).
- There are 18 different types of suspendable/expellable conduct, including:
 - Threatening, causing, or attempting to cause physical injury to others
 - Possessing or using tobacco or tobacco products
 - Possessing or using a firearm, knife, explosive, or other dangerous object
 - Causing or attempted to cause damage to school property or private property
 - Engaging in (or attempting to engage in) hazing
- The incident must have occurred at school or at a school-sponsored activity, or while the student was on his or her way to or from school or a school-sponsored activity

GROUNDS FOR SUSPENSION & EXPULSION

If a student has been suspended or expelled,
ALWAYS CHECK THE STUDENT HANDBOOK AND
THE CALIFORNIA EDUCATION CODE TO MAKE
SURE THAT THE CONDUCT AT ISSUE IS LISTED



GROUNDS FOR SUSPENSION & EXPULSION

- For a first offense, the school must usually discipline students in ways that are less severe than suspension
 - Warnings
 - Parent calls
 - Detention
 - Parent/teacher/student/administrator conference
 - Restorative circle or conference
 - Student Success Team (SST) referral
 - Counseling
 - Re-focus/cool-down room
 - PBIS strategies
 - Behavior support plan
 - Peer mediation
 - Referral to mentoring program, after-school program, city agency, or community provider

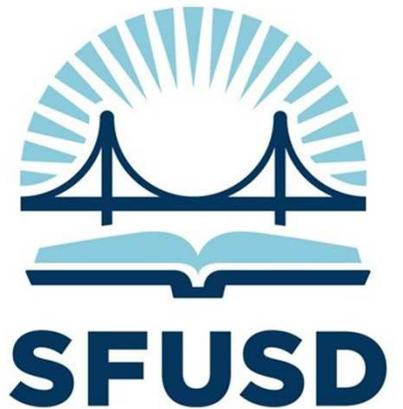
GROUNDS FOR SUSPENSION & EXPULSION

1. POSITIVE BEHAVIOR SUPPORT

- Focuses on positive expectations and responses to student behaviors
- Positive values and behaviors are explicitly taught, modeled, and practiced daily

2. RESTORATIVE PRACTICES

- Provides opportunities to develop self-discipline and positive behaviors
- Views conflict through the lens of the harm caused to people and relationships
- Sees conflict as an opportunity for students to learn about consequences, develop empathy, and experience how to make amends



GROUNDS FOR SUSPENSION & EXPULSION

By law, suspension should be imposed only when these “other means of correction” fail to bring about proper conduct.

If student’s behavior continues despite three (DOCUMENTED!) attempts of “other means of correction,” or if student refuses to participate in the alternatives, the school may suspend the student.

EXCEPTION: A school can (and sometimes is required to) suspend a student for a first incident if:

- Student is involved in more serious behavior (causing physical injury; possession of knife or firearm; possession of controlled substance, drugs, or alcohol; etc.), or
- Based on the incident, the principal or other staff determines that the student’s presence causes a danger or threatens to disrupt the instructional process

GROUNDS FOR SUSPENSION & EXPULSION

- A school **CANNOT** suspend a student for truancy, tardiness, or other absences from school activities.
- A school **CANNOT** suspend a student for more than 5 school days in a row, unless the student is being referred for expulsion.
- A school **CANNOT** suspend a student for more than 20 school days in any one school year, unless the student is transferred to another school.
 - If transferred, a student can only be suspended a total of 30 days at both schools in any one school year.



GROUNDS FOR SUSPENSION & EXPULSION

- School is required by law to expel a student if he or she has engaged in one of the following 5 acts [**ZERO TOLERANCE OFFENSES**]:
 - Possessing, selling, or furnishing a gun
 - Brandishing a knife at someone
 - Unlawfully selling a controlled substance (e.g. marijuana, methamphetamine, or other drugs)
 - Committing or attempting to commit sexual assault or battery
 - Possessing an explosive
- Expulsion for other offenses (enumerated in Education Code) is at the principal's discretion



GROUNDS FOR SUSPENSION & EXPULSION

If a school does expel a student, it must be determined that the student has committed the act(s) and that either

- 1) other means of correcting the behavior are not feasible, or the school has tried and failed to correct the behavior, or
- 2) due to the nature of the act, the student's presence at the school is dangerous to himself/herself or to others

WHY DOES SCHOOL DISCIPLINE MATTER?

DISTINCTION BETWEEN SUSPENSION & EXPULSION

GROUNDS FOR SUSPENSION & EXPULSION

PROCEDURAL REQUIREMENTS

REFERRAL TO LAW ENFORCEMENT

ALTERNATIVE EDUCATION

IN-SCHOOL & INFORMAL SUSPENSIONS

ADDITIONAL RESOURCES

Q&A

WHY DOES SCHOOL DISCIPLINE MATTER?

DISTINCTION BETWEEN SUSPENSION & EXPULSION

GROUNDS FOR SUSPENSION & EXPULSION

PROCEDURAL REQUIREMENTS

REFERRAL TO LAW ENFORCEMENT

ALTERNATIVE EDUCATION

IN-SCHOOL & INFORMAL SUSPENSIONS

ADDITIONAL RESOURCES

Q&A

PROCEDURAL REQUIREMENTS: Suspensions

MAXIMUM DURATION OF SUSPENSION

- By teacher (or sub): Day of suspension plus following day
- By principal: Up to 5 consecutive school days for any one incident; up to 20 school days during the school year
 - Remember: If transferred, the total number of days may not exceed 30 days within school year



PROCEDURAL REQUIREMENTS: Suspensions

NOTICE

- On day of suspension, school must make “reasonable effort” to contact parent/guardian (in person or by phone). If parent/guardian cannot be reached, student must remain on campus until parent/guardian is contacted (or end of school day)
- Parent/guardian must also be notified in writing of the suspension and provided with documentation of the alternatives to suspension that have previously been attempted



PROCEDURAL REQUIREMENTS: Suspensions

SUSPENSION BY TEACHER:

- Teacher must report suspension to principal
- Teacher must ask parent/guardian to attend a conference
- Teacher may require that the parent/guardian visit the classroom for offenses involving defiance, disruption, obscenity, profanity, or vulgarity

SUSPENSION BY PRINCIPAL:

- ~~Before suspension~~, principal or designee must hold pre-suspension conference with student (and, when possible, referring teacher).
Student will be:
 - Informed of reason for disciplinary action
 - Informed of evidence against him/her, and
 - Given the opportunity to present his/her version of the story and evidence in his/her defense
- If principal chooses to recommend expulsion, he/she must do so no later than 5th day of suspension

PROCEDURAL REQUIREMENTS: Suspensions

PRE-SUSPENSION CONFERENCE

- Conference must be held within 2 school days (unless student waives his right or is physically unable)
- Only time a student can be suspended by a principal without a conference is in an emergency situation
 - Emergency: Clear and present danger to life, safety, or health of pupils or school personnel
 - If student is suspended without a pre-suspension conference, the student and his parent/guardian must be notified of the right to such a conference, and the student's right to return to school for a conference



PROCEDURAL REQUIREMENTS: Suspensions

EXTENDED SUSPENSION PENDING EXPULSION

- Where expulsion is being processed, a suspension may be extended until the Board has rendered its final decision in the action IF it has been determined that student's presence would cause a danger to persons/property or could disrupt the process
- If the student is in the foster care system, the student's attorney and child welfare agency representative must be invited to participate in any meeting about the extension of suspension



PROCEDURAL REQUIREMENTS: Expulsion

DURATION

- An expulsion order generally cannot last longer than 1 year from the date of expulsion
- For mandatory expulsions, the student will be automatically expelled for 1 year

NOTICE

HEARING

DECISION

APPEAL



PROCEDURAL REQUIREMENTS: Expulsion

Notice must:

- Be given to student/parent/guardian at least 10 calendar days before the date of the hearing
- Inform of date and place of hearing
- State facts and charges
- Include a copy of discipline rules
- Inform of right to appear in person and be represented by an attorney and/or advocate
- Inform of right to inspect and obtain copies of all documents to be used at the hearing
- Inform of right to confront and question all witnesses who testify at the hearing and to question all evidence presented
- Inform of right to present oral and written evidence, including witnesses
- State requirement that student and parent/guardian inform future school districts of expulsion
- Where applicable, be in the student/family's native language

If the student is in the foster care system, the student's attorney and child welfare agency representative must also be notified (by mail, email, or phone) of the expulsion proceedings 10 calendar days before the date of the hearing

PROCEDURAL REQUIREMENTS: Expulsion

NOTICE OF HEARING MAILED TO PARENT/GUARDIAN (10+ CALENDAR DAYS BEFORE HEARING);
IF STUDENT/PARENT/GUARDIAN DOES NOT RESPOND TO NOTICE, HEARING MAY BE HELD ANYWAY

EXPULSION HEARING WITH A PANEL OF ADMINISTRATORS (NOT FROM STUDENT'S SCHOOL);
MUST OCCUR WITHIN 30 SCHOOL DAYS OF THE DATE THAT SCHOOL DETERMINES THAT STUDENT HAS
COMMITTED EXPELLABLE OFFENSE. 
STUDENT/PARENT/GUARDIAN ENTITLED TO 1 POSTPONEMENT (UP TO 30 DAYS);
HEARING WILL BE CLOSED UNLESS REQUEST FOR PUBLIC HEARING IS RECEIVED 5+ DAYS IN ADVANCE.

PANEL MAKES A **RECOMMENDATION** TO THE BOARD OF EDUCATION;
STUDENT/PARENT/GUARDIAN WILL BE **NOTIFIED OF DECISION** WITHIN 3* SCHOOL DAYS AFTER HEARING

EXPULSION. THE BOARD ASSIGNS THE STUDENT TO A SCHOOL,
CLASS, OR PROGRAM (E.G. COUNTY COMMUNITY DAY SCHOOL OR
OTHER PROGRAM), AND RECOMMENDS A MANDATORY PLAN OF
REHABILITATION

NO EXPULSION;
STUDENT SENT
BACK TO
SCHOOL

SUSPENDED
EXPULSION

PROCEDURAL REQUIREMENTS: Expulsion

AT THE HEARING, THE STUDENT HAS THE RIGHT TO:

- Bring his or her parent/guardian
- Be represented by a lawyer and/or advocate, and
- Tell his or her side of the story, which includes:
 - The right to have witnesses testify on his or her behalf
 - The right to present documents or other relevant evidence in support of his or her story, and
 - The right to question the school's witnesses and evidence brought against him or her



AFTER THE HEARING, THE SCHOOL DISTRICT MUST:

- Make a written or recorded record of the hearing
- Decide whether or not to expel the student within 3* days of the hearing
- Send written notice to parent/guardian and, if recommending expulsion, prescribe a rehabilitation plan, which may include recommendations for academic tutoring, counseling, etc.

PROCEDURAL REQUIREMENTS: Expulsion

APPEALS

- If the student and the parent/guardian do not agree with the Board of Education's decision, they may appeal to the Appeals/Reconsideration Panel



PROCEDURAL REQUIREMENTS

For students in special education

Type of Discipline	Required Procedures
Suspension of 10 days <u>or less</u>	Can suspend like students without disabilities
Suspension <u>more than 10 days</u>	Manifestation determination meeting required first
<u>Multiple suspensions</u> that create a “pattern of removal”	Manifestation determination meeting required
Expulsion 	Manifestation determination meeting required first



PROCEDURAL REQUIREMENTS



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REFERRAL TO LAW ENFORCEMENT

ALTERNATIVE EDUCATION

IN-SCHOOL & INFORMAL SUSPENSIONS

ADDITIONAL RESOURCES

Q&A

WHY DOES SCHOOL DISCIPLINE MATTER?

DISTINCTION BETWEEN SUSPENSION & EXPULSION

GROUNDS FOR SUSPENSION & EXPULSION

PROCEDURAL REQUIREMENTS

REFERRAL TO LAW ENFORCEMENT

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IN-SCHOOL & INFORMAL SUSPENSIONS

ADDITIONAL RESOURCES

Q&A

REFERRAL TO LAW ENFORCEMENT

A principal is required to call the police under certain circumstances, such as:

- When a student possesses or sells a firearm
- When a student assaults another person with a deadly weapon
- When a student possesses or sells a controlled substance

SF Safe Schools Resolution requires school staff to notify a parent any time a student will be interviewed by police.

If the school releases a minor student to law enforcement, the school must immediately notify the parent/guardian of the release and the place where the child has been taken.



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GROUNDS FOR SUSPENSION & EXPULSION

PROCEDURAL REQUIREMENTS

REFERRAL TO LAW ENFORCEMENT

ALTERNATIVE EDUCATION

IN-SCHOOL & INFORMAL SUSPENSIONS

ADDITIONAL RESOURCES

Q&A

WHY DOES SCHOOL DISCIPLINE MATTER?

DISTINCTION BETWEEN SUSPENSION & EXPULSION

GROUNDS FOR SUSPENSION & EXPULSION

PROCEDURAL REQUIREMENTS

REFERRAL TO LAW ENFORCEMENT

ALTERNATIVE EDUCATION

IN-SCHOOL & INFORMAL SUSPENSIONS

ADDITIONAL RESOURCES

Q&A

ALTERNATIVE EDUCATION

A student may be involuntarily transferred, even against his wishes or the wishes of his parent/guardian, to continuation school if:

1. There is a finding that the student
 - a. committed a violation of the Education Code, or
 - b. has been habitually truant or had irregular attendance; and
2.
 - a. other attempts at correcting the student's behavior fail to bring about improvement, or
 - b. the student's presence at school causes a danger to property or persons or threatens to disrupt the instructional process.

Involuntary transfer generally cannot extend beyond the end of the semester following the semester in which the offense occurred.



ALTERNATIVE EDUCATION

PROCEDURAL SAFEGUARDS

- Involuntary transfer should only be imposed when other means fail.
- Student/parent/guardian have a right to meet with staff before the transfer. Student and parent/guardian must be informed of this right.
 - At the meeting, student and parent/guardian must be informed of specific facts/grounds for the proposed transfer
 - Student has right to inspect all documents the school uses to make its decision.
 - Student has right to question the evidence and any witnesses the school has.
 - Student has right to present his own evidence and witnesses.
 - Student has right to have an advocate, interpreter, and/or witnesses at the meeting.
- Transfer decision must be made by staff from other schools.
- If the board decides to transfer a student, the district must send the student and parent/guardian written notice, including the reasons for the decision, facts to support the reasons, and whether the decision will be reviewed.



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PROCEDURAL REQUIREMENTS

REFERRAL TO LAW ENFORCEMENT

ALTERNATIVE EDUCATION

IN-SCHOOL & INFORMAL SUSPENSIONS

ADDITIONAL RESOURCES

Q&A

WHY DOES SCHOOL DISCIPLINE MATTER?

DISTINCTION BETWEEN SUSPENSION & EXPULSION

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REFERRAL TO LAW ENFORCEMENT

ALTERNATIVE EDUCATION

IN-SCHOOL & INFORMAL SUSPENSIONS

ADDITIONAL RESOURCES

Q&A

IN-SCHOOL & INFORMAL SUSPENSIONS

What is an in-school suspension?

- Instead of sending a child home, a student is removed from the classroom and put into a special suspension classroom, led by a teacher
 - PROS: Students are still in school, with the potential to engage and be engaged
 - CONS: Functionally the same as an out-of-school suspension; usually just a cover-up to reduce suspension numbers



IN-SCHOOL & INFORMAL SUSPENSIONS

- Students may also face informal suspensions
- Unfortunately, no law on the books yet regarding informal suspensions, so:
 - No procedural safeguards
 - No tracking mechanism



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GROUNDS FOR SUSPENSION & EXPULSION

PROCEDURAL REQUIREMENTS

REFERRAL TO LAW ENFORCEMENT

ALTERNATIVE EDUCATION

IN-SCHOOL & INFORMAL SUSPENSIONS

ADDITIONAL RESOURCES

Q&A

WHY DOES SCHOOL DISCIPLINE MATTER?

DISTINCTION BETWEEN SUSPENSION & EXPULSION

GROUNDS FOR SUSPENSION & EXPULSION

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REFERRAL TO LAW ENFORCEMENT

ALTERNATIVE EDUCATION

IN-SCHOOL & INFORMAL SUSPENSIONS

ADDITIONAL RESOURCES

Q&A

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ACLU of Northern California

- www.aclunc.org/sites/default/files/discipline_in_california.pdf

Civil Rights Project [UCLA]

- www.civilrightsproject.ucla.edu

Dignity in Schools Campaign

- www.dignityinschools.org

Legal Services for Children

- www.lsc-sf.org

National Opportunity to Learn Campaign

- www.otlcampaign.org

Solutions not Suspensions

- www.stopsuspensions.org

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PROCEDURAL REQUIREMENTS

REFERRAL TO LAW ENFORCEMENT

ALTERNATIVE EDUCATION

IN-SCHOOL & INFORMAL SUSPENSIONS

ADDITIONAL RESOURCES

Q&A

WHY DOES SCHOOL DISCIPLINE MATTER?

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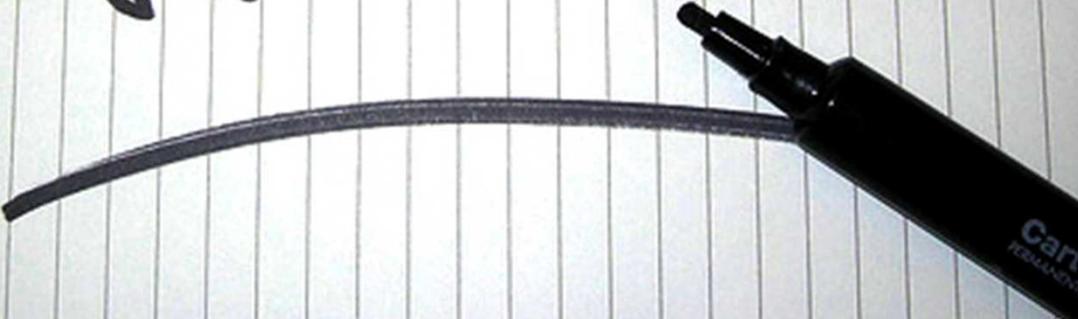
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Questions?

A hand-drawn underline in black ink is positioned below the word "Questions?". The underline is a simple, slightly curved line. In the bottom right corner of the image, the tip of a black marker is visible, pointing towards the underline. The marker has the word "Carrt" and some smaller text printed on its side.

BROUGHT TO YOU BY

LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
OF THE SAN FRANCISCO BAY AREA

*In partnership with
Mo' MAGIC, Coleman Advocates for Children &
Youth, the San Francisco Human Rights
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