

# **Sierra County Office of Education**

## **Expulsion Appeal Handbook**

To assist expelled students and their parents or guardians  
in understanding the appeal process  
and the rights of the student.

**Contracting with:  
Plumas County Office of Education  
50 Church Street  
Quincy CA 95971  
(530) 283-6500  
(530) 283-6509 (FAX)**

**Sierra County Board of Education  
Sierra County Office of Education  
109 Beckwith Road  
P. O. Box 955  
Loyalton, CA 96118  
(530) 993-1660  
(530) 993-0828 FAX**

# INTRODUCTION

The Sierra County Board of Education has prepared this Handbook to assist expelled students and the parent(s) or guardians(s) of expelled students in understanding the appeal process and the rights of the student. The Handbook constitutes the official procedures adopted by the Board for conducting expulsion appeals.

This information must be reviewed in conjunction with the laws on student discipline and expulsion appeals within the California Education Code, Sections 48900-48924. You must also review the school district's policies and administrative regulations for suspension and expulsion. You are entitled to review the record of the school district's process hearing and supporting records or documents. You have the right to consult with and engage the services of an advocate or an attorney.

The Sierra County Board of Education governs a single school district. The trustees of the Sierra County Board of Education also sit on the Sierra-Plumas Joint Unified School District Governing Board. Therefore, the Sierra County Board of Education Governing Board cannot be used to give an appeal disposition on the expulsion decision of the Sierra-Plumas Joint Unified School District Governing Board. In order to serve students and parents in accordance with the California Education Code, we have contracted with the neighboring Plumas County Governing Board of Education (hereinafter known as "Contracted County Board") to hear your appeal.

For more information, please call: (530) 993-1160

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## What is the Purpose of an Appeal?

A County Board of Education has a limited authority under law to review the procedures followed by the school district prior to expelling a student to determine:

- whether the Education code was complied with;
- whether “due process” was afforded; and
- whether there is evidence to support the local governing board’s findings and decision supporting the expulsion.

The issues a board may consider are under “Scope and Limitations of Hearing”. The meeting at which the Contracted County Board of Education considers the Appeal is not a new hearing to consider evidence about whether the student should have *been expelled*. The Contracted County Board will “hear” evidence only in unusual circumstances. The purpose of the appeal meeting is to listen to argument as to whether the local school district procedures were proper.

The Contracted County Board of Education does not have any authority to agree or disagree with the local school district governing board’s decision to expel or to modify the expulsion on the basis that the penalty was too harsh for the misconduct.

The Contracted County Board of Education’s review of the appeal for the legal errors it has authority to review may result in:

- upholding the expulsion decision;
- reversing the decision and returning the student to attend in the local district as well as expunging the record of the expulsion; or
- in rare cases, returning the case to the local school district either to consider additional evidence or to revise the factual findings.

A decision to overturn the expulsion and return the student to the Sierra-Plumas Joint Unified School District does not order attendance at the former school or at any particular school. The local school district has authority to determine attendance within district programs.

*The Contracted County Board of Education’s decision will address only expulsion issues. It will not review or order any change in the student’s suspension pending expulsion.*

## When And Where To File An Appeal?

The parent of the expelled student may file an appeal with the Superintendent of the Sierra County Office of Education within thirty (30) calendar days following the decision by the school district's governing board to expel the student. The Sierra County Office of Education will then forward the documents to the Plumas County Office of Education (the Contracted County Board of Education) to complete the process. The Contracted County Board of Education has no jurisdiction to consider a late appeal. Any appeal filed after the deadline will be returned accompanied by a cover letter indicating that the appeal was not processed.

- "Parent" also includes guardian or legal counsel on behalf of the Parent. The student may also file an appeal independently of his/her Parents.
- The thirty (30) day period starts on the first day after the date the school district's governing board takes action even if notice of the decision is not mailed to the parent immediately. The appeal must be actually received within the thirty (30) days, not just mailed. If the deadline is on a Saturday, Sunday or County Office holiday, the appeal may be filed on the next business day.
- Only the Governing Board of a school district may expel a student. The Principal of the student's school or the Superintendent of the school district may only recommend the expulsion to the Governing Board. A hearing officer or an administrative panel may conduct the expulsion hearing, develop findings of fact, and make a recommendation to the Governing Board. However, there is no expulsion until the school district's board takes formal action to expel.
- An expulsion or a suspended expulsion (where the student is returned to school with condition of probation) may be appealed. The thirty (30) day time line applies from the initial suspended expulsion decision, not at a later date if the student is expelled from violating probation.

A parent considering whether to file an expulsion appeal and/or having any questions should contact by telephone, facsimile or mail, the Office of the Superintendent of Sierra County Schools at:

Sierra County Office of Education  
P. O. Box 955, 109 Beckwith Road  
Loyalton CA 96118  
Telephone (530) 993-1660 FAX (530) 993-0828

The Superintendent will answer questions and clarify the procedures outlined in this Handbook. The Sierra County Office of Education will also contact the administration of the local school district which implemented the expulsion in order to coordinate the processing of the appeal.

## Submitting the Expulsion Appeal

This packet includes an "Expulsion Appeal and Request for Hearing" form which must be completed and submitted to the Sierra County Superintendent of Schools.

The written notice of appeal must contain all of the following information:

- Name, address, and date of birth of the expelled student;
- Names, addresses and telephone numbers of the parent(s) or guardian(s) of the student and the person, if any, representing the student;
- School district, school, and grade from which the student was expelled;
- The date of the school district Governing Board's decision to expel and the effective date of the expulsion;
- A brief statement or set of statements which explains why, in your opinion or belief, the decision of the school district Governing Board should be reversed. The statement(s) must relate to one or more of the four (4) conditions described in this Handbook under "Scope and Limitations of the Hearing". It is your responsibility to explain as clearly as you can and provide specific information about why you believe the school district Governing Board's decision should be reversed;
- Attach a copy of the notice of expulsion sent by the local school district;
- Identifying new evidence - You must clearly indicate whether you plan to offer new evidence which was not raised at the time the original expulsion hearing was held, describe such evidence, and indicate why it was not presented at the original expulsion hearing. (See Scope and Limitations of the Hearing, Page 9, #4.)

PARENTS ARE ASKED TO USE THE "EXPULSION APPEAL AND REQUEST FOR HEARING" FORM AVAILABLE IN THIS PACKET TO SUBMIT THEIR APPEAL INFORMATION. THIS FORM, WHEN COMPLETED, CONTAINS ALL OF THE INFORMATION REQUIRED TO BEGIN THE APPEAL PROCESS. THE SUPERINTENDENT'S OFFICE WILL SUPPLY ALL FORMS NECESSARY TO FILE AN EXPULSION APPEAL IN ACCORDANCE WITH THE EDUCATION CODES FOR THE STATE OF CALIFORNIA.

## EXPULSION APPEAL TIMELINE

	PROCEDURE	RESPONSIBILITY	TIMELINE
1	Parent or parent representative makes initial contact with Sierra County Office of Education	Parent	As soon as possible after local school district Governing Board's decision to expel
2	Parent is mailed packet of appeal information certified mail, email or fax	Sierra County Superintendent	After contact by parent or representative
3	Parent files expulsion appeal form with Sierra County Superintendent's Office.	Parent	Within thirty (30) calendar days of school district expulsion hearing
4	Parent submits written request for student's transcript from district and completes "Inability to Pay" form if applicable	Parent	Concurrently with submission of expulsion appeal form with Sierra County Superintendent's Office
5	District submits to Contracted County Office of Education student's transcript and other pertinent documents, incl. attendance registers, discipline actions, grades, etc.	School District	Within ten (10) schools days of the receipt of written request from parent
6	Sierra County Office of Education submits Expulsion Appeal & Request for Hearing to Contracted County Office of Education	Sierra County Superintendent	Within ten (10) schools days of the receipt of written request from parent
7	Appeal hearing is set and Notice of Hearing is mailed. Parents and school district will receive notice at least ten (10) calendar days before the hearing	Contracted County Superintendent	Within twenty (20) school days after receipt of transcript and other documents
8	Parents submit to Sierra County Office of Education any written argument of documents not delivered previously and Sierra COE forwards those documents to the Contracted County Office of Education	Parent	Ten (10) calendar days prior to appeal hearing date
9	District submits to Contracted County Office of Education written argument and/or response to parent	School District	Five (5) calendar days prior to appeal hearing date
10	Packets are prepared for Contracted County board to include all documentation submitted	Contracted County Superintendent	Approximately four (4) days before appeal hearing
11	Expulsion appeal hearing, conducted in closed session unless public hearing requested in writing five (5) days prior	Contracted County Board of Education	As scheduled by the Contracted County Board of Education
12	Closed deliberation by the Contracted County Board	Contracted County Board and Counsel	Following the appeal hearing
13	Decision is announced in public session following deliberation	Contracted County Board President	Following deliberation
14	Written decision is mailed to all parties	Contracted County Superintendent	Within three (3) working days after the hearing

## Scope and Limitations of the Hearing

Contracted County Board decides an appeal after:

- Reviewing the expulsion record, the transcript and documents considered at the original expulsion hearing;
- Considering the issues raised by the parent in the appeal as well as issues apparent from the record itself and the school district's arguments; and
- Determining which issues it has authority under law to address.

Please keep in mind that the Contracted County Board's charge is to determine if the student's due process rights were violated in a manner which resulted in the student receiving an unfair hearing. It is not the charge of the Contracted County Board to agree or disagree with the Sierra-Plumas Joint Unified School District Governing Board's decision to expel the student, but to ensure that procedures were followed and that a fair hearing was conducted. When deciding whether or not to appeal to the Contracted County Board, you should be able to identify one of the following four items as evidence that an appeal is necessary.

1. Explain how the Governing Board acted, without or in excess of its jurisdiction, in expelling the student. (Education Code §48900, 48900.2, 48900.3, 48900.4 or 48915)  
*Examples: A student may not be expelled unless the offense is a violation of the California Education Code or school rules adopted under Education Code Section 35291.5. If the expulsion was based on a local board rule, was the rule a reasonable and valid one and not inconsistent with the state law? Did the situation involve conduct related to a school activity or to school attendance? Was the expulsion hearing commenced and a final decision issued within the time limits prescribed by law?*
2. Explain how the student was not afforded a fair hearing before the district Governing Board. (Education Code §48918, 48922)  
*Examples: Was the student denied the right to be represented by an advocate or by legal counsel? Was the student prohibited from introducing testimony of witnesses on his/her behalf? Was the evidence submitted in support of the expulsion the kinds of evidence upon which reasonable persons are accustomed to rely in conduct of serious affairs? Was there a failure to introduce any evidence to support the decision to expel? Was the student or student's representative, if any, given an opportunity to confront and question any witnesses who testified at the hearing except as provided in Education Code section 48918(f)? Was the parent adequately advised of his/her rights for fully participating in the hearing?*



## Scope and Limitations of the Hearing

3. Explain how there was a prejudicial abuse of discretion by the district Governing Board in the hearing. (Education Code §48900, 48900.2, 48900.3, 48900.4, or 48915, 48918, 48922) A student is afforded a hearing from prejudicial abuse. An abuse of discretion could be established under the following, for example:
- a) *If the school district Governing Board did not proceed with the expulsion required by law (hearing panel member is from same school as student, failure of Governing Board to issue subpoena for witness in a timely manner, parent received notice of hearing less than ten (10) days in advance, Governing Board issues expulsion decision with no date set to consider readmission of the student); or*
  - b) *If the decision to expel is not supported by the findings prescribed by Education Code §48915; (The finding must spell out the facts – who, when, what – sufficiently to verify that the student engaged in misconduct. The finding Board must also indicate that other means of correction are not feasible or have repeatedly failed to bring about proper conduct; or due to the nature of the violation, the presence of the student causes a continuing danger to the physical safety of the student or others.); or*
  - c) *Misconduct must be proven by reliable “first-hand” evidence offered during the expulsion hearing. (Observance of the misconduct, admission of the student involved, statements made and or written down at the time the misconduct occurred and determined to be reliable. Misconduct may not be proven solely on “hearsay” evidence.); or*
  - d) *The Contracted County Board must find that an abuse of discretion was prejudicial to the outcome of the expulsion decision. (Did a statutory error or clerical inaccuracy impact the outcome of the expulsion hearing? Did pertinent information regarding the expulsion hearing not reach the student according to the education code guidelines?)*
4. Explain if there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the Governing Board. (Education Code §48918, 48922.)

The Contracted County Board will hear no evidence other than the information that has already been provided to the District Board in the form of witness testimony, written witness statements and documents from the original expulsion hearing. The Contracted County Board may vote to allow new evidence if, for example:

- a) Relevant, material evidence, with due diligence could not be produced at original hearing;
- b) Relevant, material evidence was improperly excluded at original hearing;
- c) Evidence is significant to Board’s jurisdictional issues.

Information the Contracted County Board will not accept as new evidence:

- a) Facts surrounding student’s misconduct;
- b) Student’s prior good behavior;
- c) Incidents occurring during the district’s investigation of the original hearing.

## **Conducting The Hearing**

### **CLOSED SESSION**

Expulsion appeals are heard by a Contracted County Board in closed session, unless the parent requests in writing five days prior to the hearing date, an open session hearing. In closed session, only the parents, any representative, the student and representatives of the local school district are permitted in the room with the Contracted County Board Members and their staff. In public session, any member of the public may attend the hearing.

### **HEARING PROCEDURE**

The Board President, or the designated presiding officer for the hearing, will call the hearing to order and describe the hearing procedures. Each person in the room will be asked to identify himself or herself for the records. A tape recorder may be in operation throughout the hearing.

The parent (or parent's representative) will be asked to indicate whether he/she noted on the expulsion appeal form a request to offer "new evidence" as part of the appeal hearing. If so, the Contracted County Board will listen to an "offer of proof" and decide whether new evidence should be allowed.

Next, the parent will be asked by the Contracted County Board President to present an opening statement. This is an opportunity for the parent to summarize or provide an overview of the issues in the appeal or to provide any background information which will be helpful to Contracted County Board members.

The representative of the Sierra-Plumas Joint Unified School District will then be asked to make a statement reflecting the school district's position.

The parent will then be allowed to identify the first issue identified in the appeal and to provide an argument in support of the appeal. The school district representative will be allowed to respond. Each issue will be identified in order by the parent with equal time for the school district to respond.

It is important here to remember to remain focused upon the record of the expulsion hearing provided to each participant and on the four (4) questions over which the Contracted County Board has authority to rule.

Parents need not be concerned about making a polished presentation. It is important to prepare the presentation in advance by having notes or a prepared script.

## Conducting the Hearing

### ISSUES RAISED BY CONTRACTED COUNTY BOARD MEMBERS

During and after each presentation, members of the Contracted County Board of Education may ask questions of the parent and of the school district's representative(s). Contracted County Board members may raise issues during the hearing based upon their own review of the hearing record. The appeal decision may be based upon these issues even if they are not raised by the parent. Examples of issues commonly raised by Contracted County Board Members are:

*Has the additional finding been made that either the student has previously received lesser corrections which have not been effective, or the student presents a danger to the physical safety of others or him/herself because of the nature of the misconduct? If such finding has been made, has the school district described the evidence in the record which supports the finding? Was the misconduct proven by evidence which shows first-hand knowledge or which is not hearsay (or an exception)?*

You and the school district representative should review the entire hearing record prior to attending the hearing and be prepared to discuss any issue raised at the appeal. If the school district representative demonstrates that he/she cannot reasonably respond to an issue raised by the Board Member because of surprise, a continuance of the appeal hearing may be granted at the discretion of the Contracted County Board.

### CONTRACTED COUNTY BOARD DELIBERATION

When the presentations and questioning are completed, the Contracted County Board will either retire to another room to deliberate or excuse from the board room all present except the Contracted County Board, the Board's legal advisor, the Contracted County Superintendent and any necessary staff. No representative of the school district or the parent will be allowed to attend the deliberations. In making its decision, the Contracted County Board will take into consideration all of the following:

The Contracted County Board of Education may not substitute its judgment for the judgment of the school district Governing Board;

The Contracted County Board may not reverse a school district Governing Board's decision because of technical inadequacies in the hearing process unless it first determines that the error was prejudicial.

The Contracted County Board may not consider evidence other than that contained in the record of the proceedings of the school district Governing Board except as noted in these rules.

## **What the Board May Decide**

**The Contracted County Board may decide one of the following actions:**

- a. Uphold the local district's decision to expel the student;
- b. Reverse the local district Board's decision to expel the student and order expungement of all expulsion records.
- c. Remand the matter to the local district for reconsideration of new information, which could not have been reasonably produced during the original hearing or was improperly excluded or order that a new hearing be conducted. The Board may order the student reinstated during this time.
- d. If the Contracted County Board determines there is evidence to support the expulsion but required findings have not been made, remand the matter for adoption of the required findings.
- e. The Contracted County Board may conduct its own hearing considering new and original information and render its own decision. If the Contracted County Board decides to conduct a hearing, it shall notify the student and his/her parents/guardian and the district of the time, date, and place for such a hearing and their procedural rights.

## **Appeal of the Contracted County Board Decision**

The decision by the Contracted County Board of Education is a final decision. Under some circumstances, review of the Board's decision in Superior Court may be available.

## **Special Education Consideration**

Listed below are mandatory conditions, which must be met for special education students prior to an expulsion order.

- a. Was there a pre-expulsion meeting of the individualized education team prior to the expulsion hearing?
- b. Was an invitation to attend the pre-expulsion hearing extended at least 48 hours prior to the hearing?
- c. Was it determined during the pre-expulsion hearing meeting that:
  - the misconduct was not caused by a manifestation of the student's handicap?
  - the student was appropriately placed at the time the misconduct occurred?

## **What Are the Next Steps?**

### **What are the Parental Options/Responsibilities Under the Compulsory Education Law if the Expulsion is Upheld?**

1. Contact the Sierra-Plumas Joint Unified School District and ask for copy of its procedures to review and readmit the expelled student.
2. A student expelled from school for any of the offenses listed in subdivision (a) and (c) of the Education Code Section 48915 shall not be permitted to enroll in any other school or district during the period of expulsion unless it is a Continuation School or Juvenile Court School.
3. If a student who has been expelled for an act other than described in Education Code 48915(a) and (c) has moved to another district, the law requires that the new district be notified of the expulsion, or any pending expulsion, and is required to hold a hearing to determine if the student is a threat to students and staff.
4. A student may apply for admission to a local charter school.
5. A student may apply for admission to a private or parochial school at the parent/guardian's cost.

### **What Happens to Student Records?**

If the Contracted County Board of Education upholds the District decision, all expulsion documentation will remain in the student's records.

If the Contracted County Board of Education overturns the District decision, all expulsion documentation will be expunged from the student's records.

If the Contracted County Board of Education remands the matter back to the District, all expulsion documentation will return to the District for reconsideration.

If the Contracted County Board of Education conducts its own hearing, all expulsion documentation will remain with the Contracted County Board until a decision is made.

# Sierra County Board of Education

EXPULSION APPEAL AND REQUEST FOR HEARING  
TO: SUPERINTENDENT  
SIERRA COUNTY BOARD OF EDUCATION  
P. O. BOX 955  
109 Beckwith Rd.  
Loyalton CA 96118  
530 993-1660

In accordance with Education Code §48919-48924, the Sierra County Board of Education, and the Plumas County Board of Education, an Expulsion Appeal Hearing is hereby requested.

1. Expelled student's name: \_\_\_\_\_
2. Age: \_\_\_\_\_ Grade: \_\_\_\_\_
3. Parent/legal guardian: \_\_\_\_\_
4. Home address: \_\_\_\_\_
5. Telephone number (home): \_\_\_\_\_(work) \_\_\_\_\_

Name, address and phone number of legal counsel or other designated representative of the appellant (if any):

6. Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_
7. Name of expelling school district: \_\_\_\_\_
8. Date Respondent Board voted to expel: \_\_\_\_\_
9. The Contracted County Board's review of the Respondent district decision shall be limited to the following:

*See Expulsion Appeal Handbook for Parents for explanation. (Please check one or more, and describe in detail how each applies to your case.)*

- A. *Explain how the governing board acted without or in excess of its jurisdiction in expelling the student. (See Expulsion Appeal Handbook for Parents; Education Code § 48900, 48900. 2, 48900.4, or 48915.)*

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B. Explain how the student was not afforded a fair hearing before the district governing board. (See *Expulsion Appeal Handbook for Parents; Education Code §48918, 48922.*)

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C. Explain how there was a prejudicial abuse of discretion by the district governing board in the hearing. (See *Expulsion Appeal Handbook for Parents; Education Code § 48900, 48900.2, 48900.3, 48900.4, or 48915,48918, 48922.*)

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D. Explain if there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the governing board. (See *Expulsion Appeal Handbook for Parents; Education Code § 48918, 48922.*)

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**(Please use another sheet of paper for additional comments, if necessary.  
Attach documentation, if any.)**

10. Expulsion hearings are closed to the public unless you request a session open to the public at least five (5) days before the hearing

I am requesting an open (public) session.

11. I hereby certify that I requested that the district superintendent prepare a transcript of the expulsion hearing and supporting documents on \_\_\_\_\_.

12. I further certify that I have received and read the *Expulsion Appeal Handbook for Parents* and understand there are certain requirements that I must comply with in proceeding with this appeal. I understand that this form must be filed with the Secretary (County Superintendent) to the Sierra County Board of Education within thirty (30) days from the date the district board voted to expel my student. I understand that the Sierra County Superintendent will forward the appeal documents to the Plumas County Board of Education.

I further certify that this information is true and correct to the best of my knowledge.

\_\_\_\_\_  
Parent/Legal Guardian Signature  
(or student, if 18 years or older)

\_\_\_\_\_  
Date

# Request for Transcripts Form

Date: \_\_\_\_\_  
To Superintendent Dr. Merrill M. Grant  
School District: Sierra-Plumas Joint Unified School District  
Address: P. O. Box 955, 109 Beckwith Rd. St.  
Loyalton CA 96118

This is to inform you that I am filing an Expulsion Appeal and Request for Hearing with the Sierra County Board of Education relative to the district's expulsion of my daughter/son. Education Code Sections 48919 and 48921 require that I request from you a written transcription of the expulsion hearing and supporting documents certified by you or by the Clerk of the Board to be a true and complete copy.

I understand that these documents will be prepared within ten (10) school days of this request and the filing of the Expulsion Appeal and Request for Hearing with the Plumas County Board of Education, provided my request is within 30 days of the school board's decision to expel. Plumas County Board of Education procedure requires either that

- (1) your office will send a copy of the written transcription and supporting documents directly to the Plumas County Board of Education, or
- (2) that I take responsibility for the delivery of the written transcription and documents within one (1) day of the completion by your office.

I am requesting:

That you send a copy of the documents directly to the Plumas County Board of Education and a copy to me at the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### OR

That I be informed immediately when these documents are ready. I will then arrange for them to be picked up at your office, duplicated, and delivered to the Plumas County Board of Education office within one (1) working day of their availability from your office. You may contact me regarding this request at:

\_\_\_\_\_  
Telephone number

Sincerely, \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

Note: This letter must be received by the School District Superintendent on or before the date you file the Expulsion Appeal and Request for Hearing with the County Superintendent.



# Cost Of Transcript Form

## Certification of Inability to Afford Cost of Transcript

Date: \_\_\_\_\_

To Superintendent: \_\_\_\_\_

School District: \_\_\_\_\_

Address: \_\_\_\_\_

Dear \_\_\_\_\_,

This is to certify that I, the parent of \_\_\_\_\_, for the reasons listed below, cannot reasonably afford the cost of the district's expulsion hearing transcript. I request that the transcript be provided to me without cost because of:

Limited income (explain):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Exceptional necessary expenses (explain):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Sincerely,

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

# Sierra County Office of Education Rules and Regulations

## STUDENT EXPULSION APPEAL FROM DISTRICT

The Sierra County Board of Education recognizes that student discipline is primarily the prerogative of the local district. The Contracted County Board also recognizes, however, that the rights to due process and the rights to a fair and just resolution of behavior issues are supported by Education Code §48919-48924 which provide for expulsion appeals to the Contracted County Board of Education.

Expulsion is the most severe form of discipline which a local district may invoke. The Contracted County Board of Education is vested with the responsibility of serving as the final appeal body through a hearing process intended to safeguard the rights of students.

Attached to this Handbook are the following from Sierra County Office of Education:

- *Board Policy 5144.1 Suspension and Expulsion/Due Process*
- *Administrative Regulation 5144.1 Suspension and Expulsion/Due Process*

This Handbook approved by the Sierra County Board of Education on August 8, 2017.

08/2017

# Sierra County/Sierra-Plumas Joint USD Administrative Regulation

Students AR 5144.1(a)

## SUSPENSION AND EXPULSION/DUE PROCESS

### Definitions

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

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

### Notice of Regulations

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

(cf. 5144 - Discipline)

(cf. 5145.6 - Parental Notifications)

### Grounds for Suspension and Expulsion: Grades K-12

Acts for which a student, including a student with disabilities, may be suspended or expelled shall be only those specified as follows:

(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; willfully used force or violence upon another person, except in self-defense; or committed as an aider or abettor, as adjudged by a juvenile court, a crime of physical violence in which the victim suffered great or serious bodily injury (Education Code 48900(a) and (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. Knowingly received stolen school property or private property (Education Code 48900(l))
12. 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))
13. 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))
14. 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))
15. Unlawfully offered, arranged to sell, negotiated to sell, or sold the prescription drug Soma (Education Code 48900(p))
16. 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. (Education Code 48900(q))
17. 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. (Education Code 48900(r))

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 and below in items #1-3 of "Additional Grounds for Suspension and Expulsion: Grades 4-12," that has any of the effects described above on a reasonable student.

*Electronic act* means the creation or transmission of a communication originated on or off school site, 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. (Education Code 48900(r))

*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. 6163.4 - Student Use of Technology)

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

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

18. Aided or abetted the infliction or attempted infliction of physical injury on another person, as defined in Penal Code 31 (Education Code 48900(t))
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)

### **Additional Grounds for Suspension and Expulsion: Grades 4-12**

Any student in grades 4-12 may be suspended, but not expelled, for disrupting school activities or otherwise willfully defying 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))

(cf. 5131.4 - *Student Disturbances*)

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

1. 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*)

2. 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*)

3. 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*)

### **Suspension from Class by a Teacher**

A teacher may suspend a student, including a grade K-3 student, from class for the remainder of the day and the following day for disruption, willful defiance, or any of the other acts specified in Education Code 48900 and listed as items #1-18 under "Grounds for Suspension and Expulsion: Grades K-12" above. (Education Code 48910)

When suspending a student from class, 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 suspended. (Education Code 48910)

As soon as possible after the teacher decides to suspend the student, he/she shall ask the student's parent/guardian to attend a parent-teacher conference regarding the suspension. 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)

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

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

The teacher of any class from which a student is suspended may require the student to complete any assignments and tests missed during the removal. (Education Code 48913)

## **Suspension by Superintendent, Principal or Principal's Designee**

To implement disciplinary procedures at a school site, the principal may, in writing, designate as the principal's designee another administrator or, if the principal is the only administrator at the school site, a certificated employee. As necessary, the principal may, in writing, also designate another administrator or certificated employee as the secondary designee to assist with disciplinary procedures when the principal and the principal's primary designee are absent from the school site.

The Superintendent, principal, or designee shall immediately suspend any student found at school or at a school activity to have committed any of the acts listed in the Board policy under "Authority to Expel" and for which he/she is required to recommend expulsion. (Education Code 48915(c))

The Superintendent, principal, or designee may impose a suspension for a first offense if he/she determines that the student violated any of items #1-5 listed under "Grounds for Suspension and Expulsion: Grades K-12" above or if the student's presence causes a danger to persons. (Education Code 48900.5)

For all other offenses, a student may be suspended only when the Superintendent or principal has determined that other means of correction have failed to bring about proper conduct in the student. (Education Code 48900.5)

When other means of correction are implemented prior to imposing suspension or supervised suspension upon a student, the Superintendent, principal, or designee shall document the other means of correction used and retain them in the student's record. (Education Code 48900.5)

*(cf. 5125 - Student Records)*

## **Length of Suspension**

The Superintendent, principal, or designee may suspend a student from school for not more than five consecutive school days. (Education Code 48911)

A student may be suspended from school for not more than 20 school days in any school year. However, if a student enrolls in or is transferred to another regular school, an opportunity school, or continuation school or class for the purpose of adjustment, he/she may be suspended for not more than 30 school days in a school year. 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, 48911, 48912)

*(cf. 6184 - Continuation Education)*

These restrictions on the number of days of suspension shall not apply when the suspension is extended pending an expulsion. (Education Code 48911)

## **Due Process Procedures for Suspension**

Suspensions shall be imposed in accordance with 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 available 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 and 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. 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 also 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.

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

If school officials request to meet with the parent/guardian, the notice may state that the law requires the parent/guardian to respond to such requests without delay. However, 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 reinstatement 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 designee may, in writing, extend the suspension until such time as the Board has made a decision, provided the following requirements are followed: (Education Code 48911)
  - a. The extension of the original period of suspension is 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.
  - b. The Superintendent or designee 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)
  - c. 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)*

- d. If the student involved is a homeless child or youth, the Superintendent or designee shall notify the district liaison for homeless students. (Education Code 48918.1)

*(cf. 6173 - Education for Homeless Children)*

In lieu of or 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.

### **Suspension by the Board**

The Board may suspend a student for any of the acts listed under "Grounds for Suspension and Expulsion: Grades K-12" and "Additional Grounds for Suspension and Expulsion: Grades 4-12" above and within the limits specified under "Suspension 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. 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 of the closed session by registered or certified mail or personal service. 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)

### **On-Campus Suspension**

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 on-campus suspension in a separate classroom, building, or site for the entire period of suspension. The following conditions shall apply: (Education Code 48911.1)

1. The on-campus suspension classroom shall be staffed in accordance with law.

2. The student shall have access to appropriate counseling services.
3. The on-campus 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. 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.

At the time a student is assigned to an on-campus 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 may be made in writing. (Education Code 48911.1)

### **Principal's Authority to Recommend Expulsion**

Unless the Superintendent or principal 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)

1. Causing serious physical injury to another person, except in self-defense
2. Possession of any knife 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)

### **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 the act(s) that form the basis for the expulsion recommendation. (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))

### **Stipulated Expulsion**

After a determination that a student has committed an expellable offense, the Superintendent, principal, or designee shall offer the student and his/her parent/guardian the option to waive a hearing and stipulate to the expulsion or to a suspension of the expulsion under certain conditions. The offer shall be made only after the student or his/her parent/guardian has been given written notice of the expulsion hearing pursuant to Education Code 48918.

The stipulation agreement shall be in writing and shall be signed by the student and his/her parent/guardian. The stipulation agreement shall include notice of all the rights that the student is waiving, including the waiving of his/her right to have a full hearing, to appeal the expulsion to the County Board of Education, and to consult legal counsel.



A stipulated expulsion agreed to by the student and his/her parent/guardian shall be effective upon approval by the Board.

### **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)

### **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 adviser

*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 adviser* 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 and Homeless Students**

If the student facing expulsion is a foster student, the Superintendent or designee shall also send notice of the hearing to the student's attorney and a representative of an appropriate child welfare agency at least 10 days prior to the hearing. (Education Code 48918.1)

If the student facing expulsion is a homeless student, the Superintendent or designee shall also send notice of the hearing to the district liaison for homeless students at least 10 days prior to the hearing. (Education Code 48918.1)

Any notice for these purposes may 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 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 to the extent that privacy rights of other students are not violated. (Education Code 48918)

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: Grades K-12" and "Additional Grounds for Suspension and Expulsion: Grades 4-12" 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. The Board may also 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)

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 a 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 referral was made, unless another placement is requested in writing by the student's parent/guardian. Before the student's placement decision is made by his/her parent/guardian, the Superintendent or designee shall consult with the parent/guardian and district staff, including the student's teachers, regarding other placement options for the student in addition to the option to return to the classroom instructional program from which the student's expulsion referral was made. The decision to not recommend expulsion shall be final. (Education Code 48918(e))

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. If the hearing officer or administrative panel recommends that the Board expel a student but suspend the enforcement of the expulsion, the student shall not be reinstated and permitted to return to the classroom instructional program from which the referral was made until the Board has ruled on the recommendation. (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 or is waived through the signing of a stipulated expulsion agreement, the final action to expel shall be taken by the Board in public. (Education Code 48918(j))

*(cf. 9321.1 - Closed Session Actions and Reports)*

The Board's decision is final. If the decision is to not expel, the student shall be reinstated immediately. If the decision is to suspend the enforcement of the expulsion, the student shall be reinstated under the conditions of the suspended expulsion.

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: Grades K-12" or "Additional Grounds for Suspension and Expulsion: Grades 4-12" (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 (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 to Suspend 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 seriousness of the misconduct
3. 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: Grades K-12" or "Additional Grounds for Suspension and Expulsion: Grades 4-12" 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)

### **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)

If the student submits 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**

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 furnishing 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)

### **Placement During Expulsion**

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 any of these
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 only acts described in items #6-12 under "Grounds for Suspension and Expulsion: Grades K-12" and items #1-3 under "Additional Grounds for Suspension and Expulsion: Grades 4-12" 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**

Prior to the date set by the Board for the student's readmission:

1. 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.
2. The Superintendent or designee shall transmit to the Board his/her recommendation regarding readmission. The Board shall consider this recommendation in closed session. If a written request for open session is received from the parent/guardian or adult student, it shall be honored to the extent that privacy rights of other students are not violated.
3. 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.
4. 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)
5. 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.
6. 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 court 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)*

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SIERRA-PLUMAS JOINT UNIFIED SCHOOL DISTRICT  
SIERRA COUNTY OFFICE OF EDUCATION  
Sierraville, California

Loyalton, California

# Sierra County/Sierra-Plumas Joint USD

## Administrative Regulation

### Suspension And Expulsion/Due Process (Students With Disabilities)

AR 5144.2

#### Students

A student identified as an individual with a disability pursuant to the Individuals with Disabilities Education Act (IDEA), 20 USC 1400-1482, is subject to the same grounds and procedures for suspension and expulsion which apply to students without disabilities, except as otherwise specified in this administrative regulation.

(cf. 5144.1 - Suspension and Expulsion/Due Process)

#### Suspension

The Superintendent or designee may suspend a student with a disability for up to 10 consecutive school days for a single incident of misconduct, and for up to 20 school days in a school year, as long as the suspension(s) does not constitute a change in placement pursuant to 34 CFR 300.536. (Education Code 48903; 34 CFR 300.530)

The principal or designee shall monitor the number of days, including portions of days, in which a student with a valid individualized education program (IEP) has been suspended during the school year.

(cf. 6159 - Individualized Education Program)

The Superintendent or designee shall determine, on a case-by-case basis, whether a pattern of removals of a student from his/her current educational placement for disciplinary reasons constitutes a change of placement. A change of placement shall be deemed to have occurred under either of the following circumstances: (34 CFR 300.536)

1. The removal is for more than 10 consecutive school days.
2. The student has been subjected to a series of removals that constitute a pattern because of all of the following:
  - a. The series of removals total more than 10 school days in a school year.
  - b. The student's behavior is substantially similar to his/her behavior in previous incidents that resulted in the series of removals.
  - c. Additional factors, such as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another, indicate a change of placement.

If a student's removal is determined to be a change of placement as specified in items #1-2 above, or the student is suspended for more than 10 school days in the same school year, the

student's IEP team shall determine the appropriate educational services. Such services shall be designed to enable the student to continue to participate in the general education curriculum in another setting, to progress toward meeting the goals set out in his/her IEP, and to address the student's behavior violation so that it does not recur. (20 USC 1412(a)(1)(A); 34 CFR 300.530)

If the IEP of a student with a disability requires the district to provide the student with transportation, the district shall provide the student with an alternative form of transportation at no cost to him/her or to his/her parent/guardian when he/she is to be excluded from school bus transportation. (Education Code 48915.5)

(cf. 3541.2 - Transportation for Students with Disabilities)

#### Interim Alternative Educational Placement Due to Dangerous Behavior

The district may unilaterally place a student with a disability in an appropriate interim alternative educational setting for up to 45 school days, without regard to whether the behavior is a manifestation of the student's disability, when the student commits one of the following acts while at school, going to or from school, or at a school-related function: (20 USC 1415(k)(1)(G); 34 CFR 300.530)

1. Carries or possesses a weapon, as defined in 18 USC 930
2. Knowingly possesses or uses illegal drugs
3. Sells or solicits the sale of a controlled substance as identified in 21 USC 812(c), Schedules I-V
4. Inflicts serious bodily injury upon another person as defined in 18 USC 1365

The student's interim alternative educational setting shall be determined by his/her IEP team. (20 USC 1415(k)(1)(G); 34 CFR 300.531)

On the date the decision to take disciplinary action is made, the student's parent/guardian shall be notified of the decision and provided the procedural safeguards notice pursuant to 34 CFR 300.504. (20 USC 1415(k)(1)(H); 34 CFR 300.530)

A student who has been removed from his/her current placement because of dangerous behavior shall receive services, although in another setting, to the extent necessary to allow him/her to participate in the general education curriculum and to progress toward meeting the

goals set out in his/her IEP. As appropriate, the student shall also receive a functional behavioral assessment and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. (20 USC 1415(k)(1)(D); 34 CFR 300.530)

#### Manifestation Determination

The following procedural safeguards shall apply when a student with a disability is suspended for more than 10 consecutive school days, when a series of removals of a student constitutes a pattern, or when a change of placement of a student is contemplated due to a violation of the district's code of conduct:

1. Notice: On the date the decision to take disciplinary action is made, the student's parent/guardian shall be notified of the decision and provided the procedural safeguards notice pursuant to 34 CFR



300.504. (20 USC 1415(k)(1)(H); 34 CFR 300.530)

(cf. 5145.6 - Parental Notifications)

(cf. 6159.1 - Procedural Safeguards and Complaints for Special Education)

2. **Manifestation Determination Review:** Immediately if possible, but in no case later than 10 school days after the date the decision to take disciplinary action is made, a manifestation determination review shall be made of the relationship between the student's disability and the behavior subject to the disciplinary action. (20 USC 1415(k)(1)(E); 34 CFR 300.530)

At the manifestation determination review, the district, the student's parent/guardian, and relevant members of the IEP team (as determined by the district and parent/guardian) shall review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents/guardians, to determine whether the conduct in question was either of the following: (20 USC 1415(k)(1)(E); 34 CFR 300.530)

a. Caused by or had a direct and substantial relationship to the student's disability

b. A direct result of the district's failure to implement the student's IEP, in which case the district shall take immediate steps to remedy those deficiencies

If the manifestation review team determines that either of the above conditions applies, the student's conduct shall then be determined to be a manifestation of his/her disability. (20 USC 1415(k)(1)(E); 34 CFR 300.530)

3. **Determination that Behavior is a Manifestation of the Student's Disability:** When the student's conduct has been determined to be a manifestation of his/her disability, the IEP team shall conduct a functional behavioral assessment, unless one had been conducted before the occurrence of the behavior that resulted in the change of placement, and shall implement a behavioral intervention plan for the student. If a behavioral intervention plan has already been developed, the IEP team shall review the behavioral intervention plan and modify it as necessary to address the behavior. (20 USC 1415(k)(1)(F); 34 CFR 300.530)

The student shall be returned to the placement from which he/she was removed, unless the parent/guardian and Superintendent or designee agree to a change of placement as part of the modification of the behavioral intervention plan. (20 USC 1415(k)(1)(F); 34 CFR 300.530)

(cf. 6159.4 - Behavioral Interventions for Special Education Students)

4. **Determination that Behavior is Not a Manifestation of the Student's Disability:** When it has been determined that the student's conduct was not a manifestation of his/her disability, the student may be disciplined in accordance with the procedures for students without disabilities. However, the student's IEP team shall determine services necessary to enable him/her to participate in the general education curriculum in another setting and to allow him/her to progress toward meeting the goals set out in his/her IEP. (20 USC 1415(k)(1)(D); 34 CFR 300.530)

As appropriate, the student also shall receive a functional behavioral assessment and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. (20 USC 1415(k)(1)(D); 34 CFR 300.530)

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

### Due Process Appeals

If the parent/guardian disagrees with any district decision regarding placement under 34 CFR 300.530 (suspension and removal for dangerous circumstances) or 34 CFR 300.531 (interim alternative placement), or the manifestation determination under 34 CFR 300.530(e), he/she may appeal the decision by requesting a hearing. The district may request a hearing if the district believes that maintaining the student's current placement is substantially likely to result in injury to the student or others. In order to request a due process hearing, the requesting party shall file a complaint pursuant to 34 CFR 300.507 and 300.508(a) and (b). (20 USC 1415(k)(3); 34 CFR 300.532)

Whenever a hearing is requested as specified above, the parent/guardian or the district shall have an opportunity for an expedited due process hearing consistent with requirements specified in 34 CFR 300.507, 300.508 (a)-(c), and 300.510-300.514.

If the student's parent/guardian or the district has initiated a due process hearing under 34 CFR 300.532 as detailed above, the student shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the 45-day time period, whichever occurs first, unless the parent/guardian and district agree otherwise. (20 USC 1415(k)(4); 34 CFR 300.533)

### Readmission

Readmission procedures for students with disabilities shall be the same as those adopted for students without disabilities. Upon readmission of a student with disabilities, an IEP team meeting shall be convened to review and, as necessary, modify the student's IEP.

### Decision Not to Enforce Expulsion Order

The Governing Board's criteria for suspending the enforcement of an expulsion order shall be applied to students with disabilities in the same manner as they are applied to all other students. (Education Code 48917)

### Notification to Law Enforcement Authorities

Law enforcement notification requirements involving students with disabilities shall be the same as those specified for all students in AR 5144.1 - Suspension and Expulsion/Due Process.

When giving any required notification concerning a student with disabilities to any law enforcement official, the principal or designee shall require the law enforcement official to certify in writing that he/she will not disclose the student's information or records to any other person without the prior written consent of the student's parent/guardian. (Education Code 49076)

(cf. 5131.7 - Weapons and Dangerous Instruments)

### Report to County Superintendent of Schools

The Superintendent or designee shall report to the County Superintendent of Schools when any special education student has been expelled or suspended for more than 10 school days. The report shall

include the student's name, last known address, and the reason for the action. (Education Code 48203)

#### Procedures for Students Not Yet Eligible for Special Education Services

A student who has not been determined to be eligible for special education and related services and who has violated the district's code of student conduct may nevertheless assert any of the protections under IDEA, if the district had knowledge of the student's disability. (20 USC 1415(k)(5); 34 CFR 300.534)

Knowledge means that, before the occurrence of the behavior that precipitated the disciplinary action, one of the following occurred: (20 USC 1415(k)(5); 34 CFR 300.534)

1. The parent/guardian, in writing, has expressed concern to district supervisory or administrative personnel, or to a teacher of the student, that the student is in need of special education or related services.
2. The parent/guardian has requested an evaluation of the student for special education pursuant to 20 USC 1414(a)(1)(B) or 34 CFR 300.300-300.311.

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

3. The teacher of the student or other district personnel has expressed specific concerns directly to the district's director of special education or other supervisory district personnel about a pattern of behavior demonstrated by the student.

However, the district shall not be deemed to have knowledge of a student's disability if the student's parent/guardian has not allowed him/her to be evaluated for special education services or has refused services or, after evaluating the student pursuant to 34 CFR 300.300-300.311, the district determined that he/she was not an individual with a disability.

When the district is deemed to not have knowledge of a student's disability, the student shall be disciplined in accordance with procedures established for students without disabilities who engage in comparable behavior. (20 USC 1415(k)(5); 34 CFR 300.534)

If a request is made for an evaluation of a student during the time period in which the student is subject to disciplinary measures pursuant to 34 CFR 300.530, the evaluation shall be conducted in an expedited manner. Until the evaluation is completed, the student shall remain in the educational placement determined by school authorities. (20 USC 1415(k)(5); 34 CFR 300.534)

#### Legal Reference:

##### EDUCATION CODE

35146 Closed sessions re: suspensions

35291 Rules of governing board

48203 Reports of severance of attendance of disabled students

48900-48925 Suspension and expulsion

49076 Access to student records

56000 Special education; legislative findings and declarations

56320 Educational needs; requirements

56321 Development or revision of individualized education program

56329 Independent educational assessment  
56340-56347 Individualized education program teams  
56505 State hearing  
PENAL CODE  
245 Assault with deadly weapon  
626.2 Entry upon campus after written notice of suspension or dismissal without permission  
626.9 Gun-Free School Zone Act  
626.10 Dirks, daggers, knives, razors, or stun guns  
UNITED STATES CODE, TITLE 18  
930 Weapons  
1365 Serious bodily injury  
UNITED STATES CODE, TITLE 20  
1412 State eligibility  
1415 Procedural safeguards  
UNITED STATES CODE, TITLE 21  
812 Controlled substances  
UNITED STATES CODE, TITLE 29  
706 Definitions  
794 Rehabilitation Act of 1973, Section 504  
CODE OF FEDERAL REGULATIONS, TITLE 34  
104.35 Evaluation and placement  
104.36 Procedural safeguards  
300.1-300.818 Assistance to states for the education of students with disabilities, especially:  
300.530-300.537 Discipline procedures  
COURT DECISIONS  
Schaffer v. Weast, (2005) 546 U.S. 549  
Parents of Student W. v. Puyallup School District, (1994 9th Cir.) 31 F.3d 1489  
M.P. v. Governing Board of Grossmont Union High School District, (1994) 858 F.Supp. 1044  
Honig v. Doe, (1988) 484 U.S. 305

Management Resources:

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Rules and Regulations, August 14, 2006, Vol. 71, Number 156, pages 46539-46845

WEB SITES

California Department of Education, Special Education: <http://www.cde.ca.gov/sp/se>

U.S. Department of Education, Office of Special Education Programs:

<http://www.ed.gov/about/offices/list/osers/osep>

SIERRA COUNTY OFFICE OF EDUCATION

Regulation SIERRA-PLUMAS JOINT UNIFIED SCHOOL DISTRICT

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