

THE SCHOOLS FOR ALL CAMPAIGN PRESENTS
Know Your Rights

School Discipline

Published by the American Civil Liberties Union of Northern California



You Have A Right to Public Education

Under the California Constitution and the Constitution of the United States of America, where public education is provided, it must be made available to all students. Part of the right to a public education is the right to stay in school and receive an education. This right, however, can be undermined by school discipline policies.

At its best, school discipline is a way to ensure that all students are allowed to learn in a supportive environment. Unfortunately over the past few years, there has been a rise in the use of suspension, expulsion, and involuntary transfers as a means of addressing behavior issues within schools. These disciplinary measures can lead to students being denied access to educational opportunities. Although the law has protections in place to ensure that students are treated fairly, many parents, teachers, and youth are unaware of students' rights.

This pamphlet is designed to help students and parents understand their rights regarding school discipline processes. It provides information about when and how a school can discipline a student and a student's specific rights during disciplinary proceedings, such as suspension, expulsion, and involuntary transfer.

Knowing your rights allows you to advocate for yourself and can help you realize the constitutional freedoms that you are guaranteed.

Special thanks to The Evelyn & Walter Haas, Jr. Fund

Published by the ACLU of Northern California, April 2009 — Updated December 2009



Contents

Introduction.....	1
Know Your Rights: Suspension Proceedings.....	3
■ What Does the Law Say About Suspension Proceedings?	
■ What Are My Rights and Responsibilities During Suspension Proceedings?	
Know Your Rights: Expulsion Proceedings.....	7
■ What Does the Law Say About Expulsion Proceedings?	
■ What Are My Rights and Responsibilities During Expulsion Proceedings?	
Know Your Rights: Involuntary Transfers Proceedings.....	13
■ What Does the Law Say About Involuntary Transfer Proceedings?	
■ What Are My Rights and Responsibilities During Involuntary Transfer Proceedings?	

Introduction

*In the 2007-2008 school year, 823,614 students
were suspended in California—
13% of the total number of students¹*

When Sarah was a high school junior she got into a fistfight with another classmate that resulted in injuries to both her and the other student. As part of the resulting disciplinary proceedings, Sarah was sent home from school for more than a month and eventually involuntarily transferred to another school. Her classmate was suspended for only three days.

Unfortunately, Sarah's story is not unique. In recent years, there has been an increase in the use of exclusionary discipline like suspension and expulsion as well as involuntary transfers as a means of addressing behavioral problems within schools. In addition, there has been an increase in the disproportionate use of such discipline measures. Such increases have a devastating impact as suspension and expulsion reduce the likelihood of graduating on time and often lead to a student dropping out of school.

¹ California Department of Education, California State Expulsion, Suspension and Truancy Information for 2007-08 available at <http://dq.cde.ca.gov/dataquest/Expulsion/ExpReports/StateExp.aspx?cYear=2007-08&cChoice=ExpData1&PageNo=1U>

In addition, the schools that students are involuntarily transferred to often offer fewer educational opportunities and are farther from where the student lives.

There are many reasons for the excessive use of suspension, expulsion, and involuntary transfer in California's schools: overcrowding, zero tolerance, and high stakes testing all play a role. The gravity of a student's behavior often does not. In fact, although the number of suspensions and expulsions has increased over the past few years, the incidence of violent behavior among students has declined.

Fortunately, the law has many protections designed to ensure that students are treated fairly in disciplinary proceedings. It is important, however, that parents and students have the information needed to ensure that these protections are applied accurately.

Know Your Rights: Suspension Proceedings

A suspension means that you are not allowed to be on school grounds for the time you are suspended, unless the school has a “supervised suspension classroom.” Cal. Educ. Code § 48911.1. **If you have been suspended, you still have due process rights that require your school to give you and your parent/guardian notice of the disciplinary action and an opportunity to tell your side of the story.**

What Does the Law Say About Suspension Proceedings?

You can only be suspended for certain kinds of conduct. A student can be suspended for conduct listed in the student/parent handbook and in California Education Code sections 48900, 48900.2, 48900.3, 48900.4, and 48900.7, which includes threatening, causing, or attempting to cause physical injury to others; possessing or using tobacco or tobacco products; etc. Check the handbook and the California Education Code sections to make sure that your suspension is for engaging in conduct listed. The education code is available online at www.cde.ca.gov/re/lr/cl/.

You cannot be suspended for things that happen away from school and are not related to school. You can only be suspended for something you did while you were either at school or at a school sponsored activity (like a dance or football game), or while you were on your way to or from school or a school sponsored activity. Cal. Educ. Code § 48900(s).

For a first offense, your school must usually discipline students in ways that are less severe than suspension, such as warnings, parent calls, detention, or Saturday school. Less severe forms of discipline are generally required for things like defiance or disruption, or dress code violations. Cal. Educ. Code § 48900.5. Your school can only suspend you for a first incident if you are involved in more serious behavior such as a fight that is not an act of self-defense; threatening or attempting to hurt someone physically; possessing, selling, or providing drugs or weapons; or if, based on the incident, the Principal or other school staff determines that your presence causes a danger, or threatens to disrupt the instructional process. Cal. Educ. Code § 48900.5.

Your school cannot suspend you for being tardy or absent from school. Cal. Educ. Code § 48900(w).

Your school cannot suspend you for more than 5 school days in a row. A suspension can only be extended beyond 5 days when an expulsion is recommended. Cal. Educ. Code § 48911(a).

Your school cannot suspend you for more than a total of 20 school days in any one school year, unless you are transferred to another school. If you are transferred to another school, you can only be suspended a total of 30 days at both schools in any one school year. Cal. Educ. Code § 48903(a).

What Are My Rights and Responsibilities During Suspension Proceedings?

Pre-suspension Conference: You have the right to tell your side of the story and to offer evidence. In most cases, the principal, an assistant principal, or the superintendent must have an informal meeting with you in order to tell you why you are being suspended. You have the right to tell your side of the story and to offer evidence in your defense. Cal. Educ. Codes §§ 48911(b), (c).

Parent Conference: The school cannot increase/extend your punishment as a means of forcing your parents to attend a conference. Some school districts allow the school or superintendent to require your parent to attend a conference to discuss your behavior. However, if your parent cannot attend or chooses not to go, the school cannot further penalize you by increasing or extending your punishment until your parent comes to a conference. Cal. Educ. Code § 48911(f).

Notification: The school must send a notice to your parent/guardian of your suspension. The school must make a “reasonable effort” to contact your parent/guardian in person or by telephone to tell them about the suspension. The school must also send a written notice to your parent/guardian of your suspension that includes the reason for the suspension. Cal. Educ. Code §§ 48911(d), 48900.8.

California law allows school districts to provide an appeals process for school suspensions. Cal. Educ. Code § 48914. To determine whether your school or district has an appeals process, check the student/parent guidelines or handbooks, or contact the office of the school principal or superintendent.

California law allows a parent to challenge a suspension, the suspension appeals process that the school district provides, or any other portion of the student's education record if it is inaccurate or misleading, contains a conclusion that is not supported by the facts, violates the student's privacy, or is just wrong. Cal. Educ. Code §§ 49070, 49071, 49072. If you think your records are wrong or inaccurate (such as a wrongful suspension), you and your parent/guardian can write to the superintendent to fix it. The superintendent must meet with you and your parent/guardian and the person who put the information in your records within 30 days. Cal. Educ. Code § 49070(b). If the superintendent agrees that your record is wrong, she/he must correct it.

- If you are unhappy with the Superintendent's decision, you may appeal to the school board in writing within 30 days. Cal. Educ. Code § 49070(b). The School Board must then listen to your appeal and decide whether to change your record within 30 days. Cal. Educ. Code § 49070(c). If you do not agree with the school board's decision, you may contact an attorney and you can add a statement to your child's record explaining why the record should be changed. Cal. Educ. Code §§ 49070(d), 49072.

Know Your Rights: Expulsion Proceedings

An expulsion means that a student is removed from the immediate supervision and control, or the general supervision, of school personnel, as those terms are used in California Education Code section 46300. Cal. Educ. Code § 48925(b).

What Does the Law Say About Expulsion Proceedings?

A school can only expel you for certain acts defined under California law. A student can be expelled for conduct listed in the student/parent handbook and in California Education Code sections 48900, 48900.2, 48900.3, 48900.4, and 48900.7.

You cannot be expelled for things that happen off school property and are not related to school. A school can only expel you for certain acts that you committed while you were either at school or at a school sponsored activity (like a dance or football game), or while you were on your way to or from school or a school sponsored activity. Cal. Educ. Code § 48900(s). In most cases, your school must have already tried other, less severe disciplinary measures to correct your behavior before it can expel you. Cal. Educ. Code §§ 48900(v), 48915(b)(1).

In most cases, schools are required to expel students only for behavior that is very serious or dangerous. Your school is required by law to expel you if you have engaged in one of the following acts:

1. Possessing, selling, or furnishing a gun, Cal. Educ. Code § 48915(c)(1);
2. Brandishing a knife at someone (actually taking out a knife and using or threatening to use it against another person), Cal. Educ. Code § 48915(c)(2);
3. Unlawful selling of a controlled substance (such as marijuana, methamphetamine, or other drugs), Cal. Educ. Code § 48915(c)(3);
4. Committing or attempting to commit sexual assault or battery, Cal. Educ. Code § 48915(c)(4); or
5. Possession of an explosive, Cal. Educ. Code § 48915(c)(5).

Your school can choose whether or not to expel you for any other type of behavior at its discretion, but is not mandated by law to do so.

If your school does expel you, it must be determined that you committed the act(s) alleged and that either (1) other means of correcting your behavior are not feasible, or the school has tried and failed to correct your behavior; or (2) due to the nature of the act, your presence at the school is dangerous to yourself or to others. Cal. Educ. Code §§ 48915(b), (c).

What Are My Rights and Responsibilities During Expulsion Proceedings?

You have the right to an expulsion hearing within 30 days of the date that the principal or superintendent determined that you committed the alleged offense. Cal. Educ. Code § 48918(a). The school district must send you written notice of your hearing at least 10 days before its date. Cal. Educ. Code § 48918(b). Where applicable, such notices must be in your native language. Cal. Educ. Code § 51101.1, 48985. The notice shall include all of the following:

1. Date and place of the hearing;
2. A statement of facts and charge; and
3. A copy of the relevant district discipline rules. Cal. Educ. Code § 48918(b).

If expulsion proceedings are started against you, you have a right to obtain copies of all of your school records within 5 business days of your request. Cal. Educ. Code § 49069. You should request both your “**cumulative file**” and your “**discipline file**” from the school administrator. You should review the documents in preparation for the hearing to:

1. Highlight any questions you may have about the file;
2. Identify any mistaken or incomplete information in the file; and
3. Help you determine which records will be most helpful to you and which documents the school intends to use against you.

Reviewing and discussing any questions, errors, or problems found in the file during the hearing is critical to best protect your right to remain in school.

An expulsion hearing shall be closed to the public unless you make a written request to have a public hearing at least 5 days before the date of the hearing. Cal. Educ. Code § 48918(c).

At your hearing, you have the right to:

1. Bring your parent/guardian;
2. Be represented by a lawyer or advocate; and
3. Tell your side of the story, which includes your right to have witnesses testify on your behalf, your right to present documents or other relevant evidence in support of your story, and your right to question the school's witnesses and evidence brought against you. Cal. Educ. Code § 48918(b)(5).

You have the right to present documents or other relevant evidence in support of your story. Cal. Educ. Code § 48918(b)(5).

You have the right to have witnesses testify on your behalf at your expulsion hearing. If your witness refuses to testify, you can request that the school board issue a subpoena to require the witness to testify. Cal. Educ. Code §§ 48918(b)(5), 48918(i)(1). Before the hearing, you should make a list of questions you want to ask your witnesses. Good witnesses are people who (1) have firsthand information related to the incident that contradicts the evidence that the school is presenting against you; (2) can talk about your good character and why you should

not be expelled; and (3) are often times family friends, mentors, coaches, teachers, religious leaders, or other people who know you well.

You have the right to question the school's witnesses and evidence brought against you. Before your hearing you should review the evidence the school plans to use against you in order to prepare questions and challenges to the evidence in advance. Cal. Educ. Code § 48918(b)(5).

After your hearing, the SCHOOL DISTRICT MUST:

- Make a written or recorded record of the hearing, Cal. Educ. Code § 48918(g);
- Decide whether or not to expel within 10 days of the hearing, Cal. Educ. Code § 48918(a);
- If they expel you, send you or your parent/guardian written notice of their decision, Cal. Educ. Code § 48918(j); and
- If they expel you, recommend a rehabilitation plan, which may include recommendations for academic performance tutoring, counseling, etc. Cal. Educ. Code §§ 48916(b), 48916.1(a).

You have the right to appeal the district's decision. If you disagree with the outcome of your hearing or if the school or district did not respect your legal rights to be informed of the hearing in advance or did not allow you to present your side of the story, you have the right to appeal. Cal. Educ. Code § 48919. **You must file a written appeal with the county board of education within 30 calendar days of the date on which the school board voted to expel you.** Cal. Educ. Code § 48919. If you are not successful with the county board of education, you can appeal your case to your county's superior court.

Brief Chronology of the Expulsion Process

Day 1	Student alleged to have committed expellable offense. Principal or superintendent recommends expulsion to school board.
At least 10 calendar days before the expulsion hearing	Student receives written notice of expulsion hearing.
Within 30 school days after recommendation for expulsion	School board, hearing officer, or administrative panel holds an expulsion hearing.
Within 3 school days after expulsion hearing, if conducted by hearing officer or administrative panel	Hearing officer or administrative panel recommends to school board whether or not to expel.
Within 10 school days after expulsion hearing and/or within 40 school days of recommendation for expulsion	School board makes decision to either (1) expel, (2) not to expel, or (3) to suspend for up to one year. Superintendent sends written notice of expulsion or suspended expulsion, with rehabilitation plan to student.
Within 30 calendar days of school board's vote to expel	Student files written appeal to county board of education.
Within 20 school days of filing appeal	County board of education (or hearing officer or administrative panel) conducts appeals hearing.
Within 3 schools days after appeals hearing (or within 10 schools days after an appeals hearing before a hearing officer or administrative panel)	County board of education decides whether to expel and sends written notice of decision to student by either personal delivery or certified mail. The decision by the county board of education is final.

Know Your Rights: Involuntary Transfer Proceedings

An involuntary transfer is when a school district transfers a student to another school against the student's wishes or the wishes of their parent/guardian. A student can be involuntarily transferred to a juvenile court school, community day school, or continuation school.

Involuntary transfers to juvenile court and community day schools are permissible under the California Education Code, but only when (1) the student is expelled, (2) the student is referred by probation, or (3) the student is referred by a school attendance review board or district level referral process. Cal. Educ. Code § 48662. If the transfer is to a continuation school, you always have the right to object. The protections outlined in this section apply to students who are involuntarily transferred to a continuation school. They do not apply to juvenile court schools or community day schools.

What Does the Law Say About Involuntary Transfer Proceedings?

An involuntary transfer is different from a voluntary transfer in that the student and her/his parents agree to the transfer voluntarily for safety or other reasons. Students who voluntarily transfer have different rights regarding re-enrolling in a regular comprehensive high school.

You can only be involuntarily transferred to a continuation school for specific violations. A student can be involuntarily transferred to a continuation school for the same specific violations, highlighted in the California Education Code section 48900, for which a student can be suspended or expelled. A student can only be transferred involuntarily if:

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

What Are My Rights and Responsibilities During Involuntary Transfer Proceedings?

You still have your right to a public education and to due process during an involuntary transfer proceeding. Involuntary transfers to continuation schools should be limited to the semester in which the act leading to the transfer occurred and the semester following that semester, unless the local board adopts a procedure for yearly review. Cal. Educ. Code § 48432.5. In most cases, you should try to avoid being transferred to a continuation, alternative, or community day school. Most of these schools are not able to provide educational opportunities that are as good as those at a regular comprehensive high school. For example, many continuation, alternative, and community day schools have shortened instruction time when students are in classes learning, offer fewer classes for students to take, have higher drop-out rates, and provide fewer extracurricular activities for students. If you cannot avoid being transferred involuntarily, you should try to be transferred to another regular comprehensive high school.

In most cases, involuntary transfer to a continuation school shall only be imposed when other means fail to bring about student improvement. Cal. Educ. Code § 48432.5.

You have a right to request a meeting with school staff before they transfer you involuntarily. Your school must provide you with written notice about your right to request a meeting with school staff before the school district decides to transfer you involuntarily. At the meeting, the school must inform you and your parent/guardian of the specific facts and reasons for the proposed transfer. Cal. Educ. Code § 48432.5.

At the meeting, you have the right to:

1. Inspect all documents the school is using on which to base its decision;
2. Question the school's evidence and any witnesses the school uses;
3. Present your own evidence and witnesses; and
4. Have an advocate, interpreter, and/or witnesses at the meeting. Cal. Educ. Code § 48432.5.

No one from your school may be involved in the final decision to transfer you. The final decision must be made by school district personnel and/or staff from other schools. Cal. Educ. Code § 48432.5. If the school board decides to transfer you involuntarily, the school district must send you and your parent/guardian written notice of its decision. This notice must include (1) the reasons for the decision; (2) the facts to support the reasons; and (3) whether the decision will be reviewed periodically and, if so, the procedure for this review. Cal. Educ. Code § 48432.5.

You have the right to return to a regular comprehensive high school at the beginning of the following school year if you voluntarily transfer to a continuation school. If you are at a continuation school, you may return to a regular comprehensive high school at any time if you obtain the consent of the superintendent of your school district. Cal. Educ. Code § 48432.5.

There is an urgent need to teach and inform pupils in the public schools about their rights, as guaranteed by the federal and state constitutions, in order to increase pupils' awareness and understanding of their rights and the rights of others, with the intention of promoting tolerance and sensitivity in public schools and in society as a means of responding to potential harassment and hate violence.

—Cal. Educ. Code § 201(e)

California Education Code

www.cde.ca.gov/re/lr/cl/

Schools For All Campaign

www.aclunc.org/SchoolsForAll

schoolsforall@aclunc.org



www.aclunc.org/SchoolsForAll