AR 5144.1(a)

WILLOW CREEK ELEMENTARY

Students

SUSPENSION AND EXPULSION

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 grounds for suspension and expulsion. (Education Code 35291, 48900.1, 48980) *(cf. 5144 - Discipline) (cf. 5145.6 - Parental Notifications)*

A Restorative Foundation

Schools shall focus on the correction of a student's specific misbehavior through means of correction other than punitive measures such as suspension and expulsion. The District's ultimate goal is to keep students in class and in school so that they can benefit from the instructional program provided. (Assembly Bill (AB) 1729 (Ch. 425, Statute of 2012))
Except for misconduct that requires mandated action, suspension, including in-school suspension, shall be imposed only when other means of correction have failed to correct the student's specific misbehavior. (Education Code 48900(v), 48900(w),48900.5(a) and 48915(c)).

Principals shall monitor site data and address if the data indicates disproportionate impacts to students of color.

GROUNDS FOR SUSPENSION: Grades TK-12

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 Board of Education 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 referring the student to the principal or designee as provided in Education Code 48910.

A student may be suspended for committing an act that is related to school activity or school attendance within the school district or occurring within any other school district. School activity or attendance can include, but is not limited to (Education Code 48900(s)):

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

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Acts for which a student, including a student with disabilities, may be suspended shall be only those specified as follows: *(cf. 5144.2 - Suspension and Expulsion (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. A recommendation for expulsion is mandatory. (Education Code 48900(b), 48915(c).) *(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. Alternative-to-suspension or other means of correction shall be used for first offense. Suspension shall be used for subsequent incidents after participation in alternative-to-suspension or other means of correction. (E (6) 5144.1). A recommendation for expulsion is mandatory for the sale of a controlled substance. (Education Code 48900(c), 48915(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. A recommendation for expulsion is mandatory for the sale of a controlled substance. (Education Code 48900(c), 48915(c).)

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. Suspension will only be used in cases of major property damage. (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. Alternative-to-suspension or other means of correction shall be used for first and second offense. Suspension shall be used for subsequent incidents after participation in alternative-to-suspension or other means of correction. (E (6) 5144.1). (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

SUSPENSION AND EXPULSION (continued)

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. Mandatory recommendation for expulsion is required. Incident must be addressed through District Title IX process. (Education Code 48900(n), 48915(c).)

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. Alternative-to-suspension or other means of correction shall be used for first offense. Suspension shall be used for subsequent incidents after participation in alternative-to-suspension or other means of correction. (E (6) 5144.1) (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

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"Additional Grounds for Suspension: 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: Grades 4-12

Any student in grades 9-12 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).)

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

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. Incidents of sexual harassment or sexual assault shall be handled in accordance with the

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District's sexual harassment policies and regulations. (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 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 under "Grounds for Suspension Grades TK-12" above. (Education Code 48910.)

When suspending a student from class, the teacher shall immediately report this action to the principal or designee and refer the student to the principal or designee for appropriate action. The teacher shall inform the principal or designee whether or not she or he has contacted the parent. If the teacher has not contacted the parent, the principal or designee must contact the parent or guardian to set up 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. If that action requires the continuing presence of the student at school, he/she/they shall be appropriately supervised during the class periods from which he/she/they has been suspended. (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/they was suspended. (Education Code 48910.)

SUSPENSION AND EXPULSION (continued)

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/they is required to recommend expulsion. (Education Code 48915(c).)

The Superintendent, principal, or designee may suspend a student for committing one or more of the acts described in Education Code 48900, 48900.2, 48900.3, 48900.4, and 48900.7. Suspension would be imposed once it has been determined that the student committed one or more of these acts and when other means of correction fail to bring about proper conduct. However, a student may be suspended upon a first offense for acts described in Education Code 48900(a)-(e), or, due to the nature of the violation, the student's presence causes danger to others and must be immediately suspended for any act for which a mandatory recommendation for expulsion is required, as identified above. *(cf. E (7) 5144.1 - Grounds for Suspension)*

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/they 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)*

SUSPENSION AND EXPULSION (continued)

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 and Appeals 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 in the district student information database under "behavior." Acts involving allegations of sexual harassment or sexual assault shall be handled in accordance with the District's sexual harassment regulations. (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 within 24 hours. (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 TK-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

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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.)

Right to Appeal Suspension

During the parent conference required under due process procedures for suspension, the principal or designee shall inform the student and parent/guardian of their right to appeal a suspension and advise the student or parent/guardian that they may pursue the appeal process by contacting the Placement and Appeal Office.

1. The student or parent/guardian may initiate the appeal process by contacting the Placement and Appeal Office in writing within three weeks of the conference with the principal or designee.

2. The Placement and Appeal Office will mail the *Request for Suspension Appeal* to the student and parent/guardian with instructions that this form must be completed and returned so that it is received no later than three weeks after the date of the principal's decision.

3. The Placement and Appeal Office will determine from the information provided whether or not the principal or designee suspended the student properly and followed all applicable procedures in regard to the suspension. Placement and Appeal personnel, as they may deem necessary, may contact either of the parties for the purpose of clarifying information provided.

4. Based on the information submitted or requested, Placement and Appeal personnel have the

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authority as the superintendent's designee, to make the following determinations regarding the suspension:

a. Uphold the suspension.

b. Uphold the suspension but expunge suspension records at the end of the semester in which the offense occurred if the student has no further discipline/behavior problems in the district.

c. Determine that the suspension was not within district guidelines, overturn the suspension and order that all records and documents regarding the disciplinary proceedings and suspension be immediately destroyed. No information regarding the suspension shall be placed in the student's permanent record or file or
communicated to any person not directly involved in the disciplinary proceedings.

d. Determine that the penalty imposed was inappropriate for the violation, and order that all records and documentation concerning the suspension shall be revised to indicate only those facts leading to the penalty imposed by the school.

5. The Placement and Appeal Office will mail a copy of the decision to the student and/or parent/guardian within five days of issuing the decision. A copy of this decision will also be mailed to the school principal.

GROUNDS FOR WHICH A RECOMMENDATION FOR EXPULSION IS MANDATORY

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

Per Education Code 48915(c) the act must have been committed at school or at a school activity off school grounds:

1. Firearm

a. Possessing firearm when the student did not have prior written permission for firearm possession from a certificated employee concurred in by
principal or designee.

b. Selling or furnishing a firearm.

2. Brandishing a knife at another person. As used in this section, "knife" means any dirk, dagger, or other weapon with a fixed, sharpened blade fitted primarily for stabbing, a weapon with a blade longer than 3 1/2 inches, a folding knife with a blade that locks into place, or a razor with an unguarded blade.

3. Unlawfully selling a controlled substance listed in Health and Safety Code 11053
et seq.

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4. Committing or attempting to commit a sexual assault or committing a sexual battery as defined in subdivision (n) of 48900.

5. Possession of an explosive. As used in this section, the term "explosive" means "destructive device" as described in Section 921 of Title 18 of the United States Code.

GROUNDS FOR PERMISSIVE EXPULSION (EXPULSION MAY BE RECOMMENDED)

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/they shall recommend a student's expulsion for any of the following acts: (Education Code 48915(a))

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.)

Recommendation for expulsion shall be based on one or both of the following additional findings:

1. Other means of correction are not feasible or have repeatedly failed to bring about proper conduct. (Education Code 48915(a).)

2. Due to the nature of the act, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others. (Education Code 48915(b).)

Education Code 48915(a) - Act must be committed at school or at a school activity.

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. "Robbery or extortion."
4. Assault or battery on a school employee.

Change of Placement as an Alternative to Permissive Expulsion

For permissive (shall) recommendations for expulsion, the site principal or designee can offer a change of placement as an alternative to expulsion. This can only be offered for acts listed as 1-5 above and cannot be offered for any act which requires mandatory recommendation for expulsion. The area superintendent must be notified, and the merits of the case must be communicated to the area superintendent for review. If the area superintendent is in agreement with the change of placement, the area superintendent will coordinate efforts with the current site principal and receiving site principal to complete the Site-Initiated Placement process.

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The above shall not apply where a student is determined to have committed sexual assault or engaged in sexual harassment or where a change of placement is mandated under Education Code section 48915(d)(3).

Right to Expulsion Hearing

Any student recommended for expulsion shall be entitled to a hearing to determine whether he/she/they 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).)

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/they 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.)

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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/they testifies.
3. Have a closed hearing during the time he/she/they 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.)

In a hearing in which a pupil is alleged or has been determined through the District's Title IX proceedings to have committed or attempted to commit a sexual assault or to have committed a sexual battery, a complaining witness shall be given five days' notice before being called to testify, and 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 or her testimony. Before a complaining witness testifies, support persons shall be admonished that the hearing is confidential.

The expulsion review panel may, upon a finding that good cause exists, determine that the disclosure of either the identity of a witness or the testimony of that witness at the hearing, or both, would subject the witness to an unreasonable risk of psychological or physical harm. Upon this determination, the testimony of the witness may be presented at the hearing in the form of sworn declarations that shall be examined only by the governing board of the school district or the hearing officer or administrative panel. Copies of these sworn declarations, edited to delete the name and identity of the witness, shall be made available to the pupil.

Witness Statements

Witness statements are a form of evidence and it is essential that they be obtained immediately from the following people:

- Alleged person responsible
- Alleged impacted party
- Witness(es)
- Staff involved in addressing the incident

Witness statements should provide the facts related to the incident that will assist with the investigative process and inform the appropriate administrative course of action. The goal of a witness statement is to create a clear picture of an incident. A statement should be written soon after the principal or designee has conducted an interview. If there are multiple witnesses, they should be separated into different offices or rooms and not have the opportunity to speak with one another until all interviews are conducted and statements obtained. Witness statements should be reviewed by staff before releasing the witness. Witness statements are to be written on the official district witness statement that

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has not been altered or revised. If there is an unavoidable reason as to why the district witness statement cannot be used, contact the Placement and Appeal office.

Be advised that witness statements may be subject to third party review if they become part of expulsion proceedings at the district level, expulsion appeal at the county level and/or part of court proceedings. Witness statements are to include the following:

• Location
• Date
• Time
• Description of incident in order of events what was experienced, witnessed or heard • Names of other students, staff involved
• Evidence, if applicable
• Injuries sustained, if applicable

When students are too young or unable to write down their statements, these students can dictate their statements to staff. Statements should be read back to ensure accuracy.

Students who are not fluent in English should be allowed to write their statements in their native language and have them translated by staff.

A student who is removed from campus due to a serious injury or by school police may not have the opportunity to write a statement; therefore, it will be necessary to work with the family of the student to obtain a witness statement as soon as possible.

If a student refuses to write a statement, ask the student to indicate in writing that he/she/they does not wish to write a statement and sign and date the document. If the student refuses, staff may write "refuse" on the statement.

Sworn Declarations

If a student believes that the disclosure of his or her identity as a witness would subject him or her to unreasonable risk of psychological or physical harm, the student's testimony may be presented in the form of a sworn declaration that explains the unreasonable risk of psychological or physical harm.

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))

SUSPENSION AND EXPULSION (continued)

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 non-attorney 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.

Non-attorney 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.)

SUSPENSION AND EXPULSION (continued)

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 TK-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/they 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 non-threatening environment.

(1) The district shall provide a room separate from the hearing room for the use of the complaining

SUSPENSION AND EXPULSION (continued)

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/they 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/they 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).)

Administrative Panel

A hearing conducted by the 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 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).)

SUSPENSION AND EXPULSION (continued)

In accordance with Board policy, the administrative panel may recommend that the Board suspend the enforcement of the expulsion. If the 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 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:

SUSPENSION AND EXPULSION (continued)

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 TK-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 of Education. (Education Code 48918.)

4. Notice of the alternative educational placement to be provided to the student during the time of expulsion. (Education Code 48918.)

5. Notice of the student's or parent/guardian's obligation to inform any new district in which the student seeks to enroll of the student's status with the expelling district, pursuant to Education Code 48915.1. (Education Code 48918.)

Decision 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 TK-12" or

SUSPENSION AND EXPULSION (continued)

"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 of Education, 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 of Education. (Education Code 48917.)

Appeal

The student or parent/guardian is entitled to file an appeal of the Board's decision with the County Board of Education. 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 of Education, 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 School Police of any student acts which may involve the possession or sale of narcotics or of a controlled substance. In addition, city law enforcement

SUSPENSION AND EXPULSION (continued)

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.)

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 with discipline challenges.

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 TK-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 TK-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.

SUSPENSION AND EXPULSION (continued)

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)*

Regulation **WILLOW CREEK ELEMENTARY SCHOOL DISTRICT**

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