

AR 5144.1
Suspension Due Process

This AR provides the implementing regulations for BP 5144.1. These regulations govern suspensions, whereas AR 5144.3 governs expulsions.

Definitions

“Suspension from school” means removal of a student from ongoing instruction for adjustment purposes. However, suspension does not mean any of the following:

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

“Day” means a calendar day unless otherwise specifically provided.

“School day” means a day upon which the schools of the district are in session or weekdays during the summer recess.

“Student” includes a student's parent/guardian or legal counsel.

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

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

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, suspension and expulsion.

Grounds for Suspension

A student may be subject to suspension when it is determined that he/she:

1. Caused, attempted to cause, or threatened to cause physical injury to another person or willfully used force or violence upon the person of another, except in self-defense.

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

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.

3. Unlawfully possessed, used, sold, or 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.

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 controlled substance, alcohol beverage or intoxicant.

5. Committed or attempted to commit robbery or extortion.

6. Caused or attempted to cause damage to school property or private property.

7. Stole or attempted to steal school property or private property.

8. Possessed or used tobacco or any products containing tobacco or nicotine products, including but not limited to cigars, cigarettes, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets and betel. This restriction shall not prohibit a student from using or possessing his/her own prescription products.

9. Committed an obscene act or engaged in habitual profanity or vulgarity.
10. Unlawfully possessed or unlawfully offered, arranged, or negotiated to sell any drug paraphernalia, as defined in Health and Safety Code [11014.5](#).
11. Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, other school officials, or other school personnel engaged in the performance of their duties.
12. Knowingly received stolen school property or private property.
13. Possessed an imitation firearm, i.e., 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.
14. Committed or attempted to commit a sexual assault as defined in Penal Code [261](#), [266c](#), [286](#), [288](#), [288a](#) or [289](#), or committed a sexual battery as defined in Penal Code [243.4](#).
15. Harassed, threatened, or intimidated a student who is a complaining witness or witness in a school disciplinary proceeding for the purpose of preventing that student from being a witness and/or retaliating against that student for being a witness.
16. Unlawfully offered, arranged to sell, negotiated to sell, or sold the prescription drug Soma.
17. Made terrorist threats against school officials and/or school property.

A student in grades 4 through 12 is also subject to suspension when it is determined that he/she:

18. Committed sexual harassment as defined in Education Code [212.5](#)
19. Caused, attempted to cause, threatened to cause, or participated in an act of hate violence as defined in Education Code [233](#)
20. 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
21. Engaged in an act of bullying, including, but not limited to, bullying by means of an electronic act, directed toward a student or school personnel.

Bullying means one or more acts by a student or group of students that constitutes sexual harassment pursuant to Education Code [48900.2](#), as defined in item #18 above; hate violence pursuant to Education Code [48900.3](#), as defined in item #19 above; or harassment, threats, or intimidation pursuant to Education Code [48900.4](#), as defined in item #20 above.

Electronic act means the transmission of a communication, including, but not limited to, a message, text, sound, or image by means of an electronic device, including, but not limited to, a telephone, wireless telephone, or other wireless communication device, computer, or pager.

A student may be suspended for any of the acts listed above if the act is related to school activity or school attendance occurring at any district school under the jurisdiction of the Superintendent or principal or within any other school district, including but not limited to the following circumstances:

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

The Superintendent or principal may use his/her discretion to provide alternatives to suspension for a student subject to discipline under this administrative regulation, including, but not limited to, counseling and an anger management program.

Alternatives to suspension will be used with students who are truant, tardy, or otherwise absent from assigned school activities.

Removal from Class by a Teacher/Parental Attendance

A teacher may suspend any student from his/her class for the remainder of the day and the following day for any act listed in "Grounds for Suspension" above.

A teacher also may refer a student to the principal or designee for consideration of suspension from school.

When removing a student from his/her 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. The student shall be appropriately supervised during the class periods from which he/she has been removed.

As soon as possible, the teacher may ask the student's parent/guardian to attend a parent-teacher conference regarding the removal. A counselor or psychologist should attend the conference if it is practicable, and a school administrator may attend if either the parent/guardian or teacher so requests.

A student removed from class shall not be returned to class during the period of removal without the approval of the teacher of the class and the principal.

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

The teacher of any class from which a student is removed may require the student to complete any assignments and tests missed during the removal.

Pursuant to Governing Board policy, a teacher may provide that the parent/guardian of a student whom the teacher has removed attend a portion of a school day in his/her child's classroom. When a teacher makes this request, the principal shall send the parent/guardian a written notice that the parent/guardian's attendance is requested pursuant to law.

This notice shall also:

1. Inform the parent/guardian when his/her presence is expected and by what means he/she may arrange an alternate date
2. Describe the legal protections afforded to the parent/guardian as an employee under Labor Code [230.7](#)
3. State that if the parent/guardian does not have a means of transportation to school, he/she may ride the school bus with the student
4. Ask the parent/guardian to meet with the principal after the visit and before leaving school, as required by Education Code [48900.1](#)

Suspension by Superintendent, Principal or Principal's Designee

The Superintendent, principal or principal's designee may suspend a student from a school for not more than five consecutive school days unless the suspension is extended pending expulsion.

The Superintendent or designee shall immediately suspend any student found at school or at a school activity to be:

1. Possessing, as verified by a district employee, or selling or otherwise furnishing a firearm, unless the student had obtained prior written permission to possess the item from a certificated school employee, with the principal or designee's concurrence
2. Brandishing a knife, as defined in Education Code [48915\(g\)](#), at another person
3. Unlawfully selling a controlled substance listed in Health and Safety Code [11053-11058](#)
4. Committing or attempting to commit a sexual assault or committing a sexual battery as defined in item #14 under "Grounds for Suspension" above
5. Possession of an explosive as defined in 18 USC [921](#)

Suspension also may be imposed upon a first offense if the Superintendent, principal or designee determines the student violated items #1-5 listed in "Grounds for Suspension" above or if the student's presence causes a danger to persons or property or threatens to disrupt the instructional process.

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

The Superintendent or designee may count suspensions that occur while a student is enrolled in another school district toward the maximum number of days for which a student may be suspended in any school year.

Suspensions shall be initiated according to the following procedures:

1. Informal Conference: Suspension shall be preceded by an informal conference conducted by the principal, designee or the Superintendent 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 and the evidence against him/her; the student shall be given the opportunity to present his/her version and evidence in support of his/her defense.

This conference may be omitted if the principal, designee or the Superintendent determines that an emergency situation exists. An emergency situation involves 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 a conference. The conference shall be held within two school days, unless the student waives his/her right to it or is physically unable to attend for any reason. In such case, the conference shall be held as soon as the student is physically able to return to school.

2. Administrative Actions: All requests for student suspension are to be processed by the principal or designee of the school in which the student is enrolled at the time of the misbehavior. A school employee shall report the suspension, including the name of the student and the cause for the suspension, to the Superintendent or designee.

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

This notice shall state the specific offense committed by the student.

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

4. Parent/Guardian Conference: Whenever a student is suspended, school officials may meet with the parent/guardian to discuss the causes and duration of the suspension, the school policy involved and any other pertinent matter.

While the parent/guardian is required to respond without delay to a request for a conference about a student's behavior, no penalties may be imposed on the student for the failure of the parent/guardian to attend such a conference. The student may not be denied readmission solely because the parent/guardian failed to attend.

Suspension by the Board

The Board may suspend a student for any of the acts listed in "Grounds for Suspension" above and within the limits specified in "Suspension by Superintendent, Principal or Principal's Designee" above.

The Board may suspend a student enrolled in a continuation school or class for a period not longer than the remainder of the semester if any of the acts listed in "Grounds for Suspension" occurred. The suspension shall meet the requirements of Education Code [48915](#)

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

The Board shall provide the student and his/her parent/guardian with written notice of the closed session by certified mail. 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.

On-Campus Suspension Program

Students for whom an expulsion action has not been initiated and who pose no imminent danger or threat to the school may be assigned to a separate, supervised suspension classroom for the entire period of suspension. The following conditions shall apply:

1. The supervised suspension classroom shall be staffed in accordance with law.
2. The student shall have access to appropriate counseling services.
3. The supervised suspension classroom shall promote completion of schoolwork and tests missed by the student during the suspension.
4. Each student shall be responsible for contacting his/her teacher(s) to receive assignments to be completed in the supervised suspension classroom. The teacher 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 a supervised suspension classroom, the principal or designee shall notify the student's parent/guardian in person or by telephone. When the assignment is for longer than one class period, this notification shall be made in writing.

Notifications 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](#).

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 or possession of weapons or firearms in violation of Penal Code [626.9](#) and [626.10](#).

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.

Regulation BERKELEY UNIFIED SCHOOL DISTRICT

approved: May 21, 2003 Berkeley, California

revised: October 28, 2009

revised: January 11, 2017