**California Department of Education**

**M e m o r a n d u m**

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**To:** County and School District Superintendents

 Charter School Administrators

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 Student Achievement Branch

# **Subject:** Replacing Discipline with Supports

This guidance addresses the legal requirements and recommended best practices governing discipline practices. The guidance itself is non-binding and does not have the effect of law. Legal obligations are set forth in the applicable statutes and case law, which are cited in the guidance and in the Appendix.

## The Importance of Keeping Students in School

Schools should do everything they can to keep all students in school and avoid issuing suspensions. The law requires, in most cases, that schools use alternatives to traditional discipline before imposing suspensions. Families should also do what they can to keep their children in school as California’s compulsory education law requires everyone between the ages of six and eighteen years of age to attend school.

## Replacing Discipline with Supports

Research has shown that suspension can do more harm than good. Sending a student home from school does not address the root cause of a student’s behavior; it only removes students from the learning environment. Legislation in recent years, reflecting extensive research, has sought to minimize the use and impact of discipline that takes students out of school. The state’s new accountability system puts a spotlight on school suspensions and creates incentives to minimize the use of punitive discipline. *See* 2022 Dashboard Technical Guide Suspension Rate Indicator at <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.cde.ca.gov%2Fta%2Fac%2Fcm%2Fdocuments%2Fdbguidesusp22.docx&wdOrigin=BROWSELINK>.

Reducing suspensions and expulsions is possible, in part, through innovative and effective alternatives. Great work is happening in this area as California’s school leaders have sought to dismantle the school-to-prison pipeline through the implementation of the Multi-Tiered System of Supports (MTSS), positive behavior intervention systems, implicit bias training, restorative justice practices, and engaging academics. Research has established that statewide implementation of these practices will lead to improved academic outcomes and long-term postsecondary success for all students. The legislative changes include:

* **Willful Defiance:** In 2013, the Legislature approved Assembly Bill 420, which prohibited suspensions on willful defiance or disruption grounds for students in grades kindergarten through three. In 2019, the Legislature extended this prohibition to students in grades four through eight through Senate Bill 419 (<https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB419>).
* **Homework for Students Suspended for Two or More Days:** Assembly Bill 982 (<https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB982>), also enacted in 2019, requires local educational agencies (LEAs), including charter schools, to provide homework assignments to students upon the request of the parent, guardian, or student during a suspension of two or more school days.
* **Minimize Discipline for Attendance Issues:** California *Education Code* (*EC*) Section 48900(w)(1) states that it is the intent of the Legislature that alternatives to suspension or expulsion be used for a pupil who is truant, tardy, or otherwise absent from school activities. It does not make sense to suspend a student for missing school.
* **Support Instead of Discipline:** *EC* Section 48900(v) provides that a superintendent of the school district or principal is encouraged to provide alternatives to suspension or expulsion, using a research-based framework with strategies that improve behavioral and academic outcomes, that are age-appropriate and designed to address and correct the pupil’s specific misbehavior as specified in *EC* Section 48900.5.
* **Multi-Tiered System of Support (MTSS):** *EC* Section 48900(w)(2) adds that the MTSS, which includes restorative justice practices, trauma-informed practices, social and emotional learning, and schoolwide positive behavior interventions and support, may be used to help students gain critical social and emotional skills, receive support to help transform trauma-related responses, understand the impact of their actions, and develop meaningful methods for repairing harm to the school community.
* **Suspension as a Last Resort:** *EC* Section 48900.5 provides that, except for specified exceptions, suspension, including supervised suspension, shall be imposed only when other means of correction fail to bring about proper conduct. The section provides an extensive list of suggested positive, non-exclusionary alternative practices. Other means of correction may include additional academic supports to ensure, for example, that instruction is academically appropriate, culturally relevant, and engaging for students at different academic levels and with diverse backgrounds.
* **Expulsion as a Last Resort:** *EC* Section 48915 provides that, except for a category of the most serious offenses, a factor for consideration is whether other means of correction can address the conduct.

## Resources for Support Alternatives

Key resources to help reduce suspensions and expulsion by using alternative practices include the following:

* The CDE Behavioral Intervention Strategies and Supports web page at <https://www.cde.ca.gov/ls/ss/se/behaviorialintervention.asp> outlines where LEAs and schools can learn about Fix School Discipline, suspension data on Dataquest and the California School Dashboard, and Restorative Justice programs. These practices and policies address discipline issues and proactively support students whose behaviors may signify a call for help.
* The CDE MTSS web page at <https://www.cde.ca.gov/ci/cr/ri/> provides a research-proven framework aligned to address students’ academic, behavioral, and social success. It brings together the Response to Instruction and Intervention and Positive Behavioral Interventions and Supports to support the whole child through a data-driven, tiered approach to academic and social emotional supports. An MTSS approach can ensure instruction and interventions meet student needs to address the reality that African American students and students with disabilities—two of the groups most often suspended—have lower literacy and math scores than other racial groups and students without disabilities.
* There are also resources on the CDE Mental Health web page at <https://www.cde.ca.gov/ls/cg/mh/index.asp>, such as strategies, resources, and training in psychological and mental health issues, including coping with tragedy, crisis intervention and prevention, school psychology, and suicide prevention.
* The CDE Attendance Improvement web page at <https://www.cde.ca.gov/ls/ai/> provides resources to address attendance improvement through prevention, early identification, and intervention instead of using punitive discipline.
* The CDE Asset-Based Pedagogies web page at <https://www.cde.ca.gov/pd/ee/assetbasedpedagogies.asp> has resources on culturally relevant and sustaining instructional methods, which focus on the strengths that diverse students bring to the classroom and school community. These approaches engage all learners through curriculum that connects to students’ cultural and linguistic identities. Asset-Based Pedagogy is also a key feature in California’s State Literacy Plan, and aligned literacy resources are available on the California Educators Together web page at <https://www.caeducatorstogether.org/groups/comprehensive-literacy-state-development-grant-resource-repository>.

## Disproportionality in Discipline

It has been widely accepted since *Brown v. Board of Education* (1954) 347 U.S. 483, 493, that racial segregation of any kind in school harms students by depriving them of an equal educational opportunity. *Crawford v. Board of Education* (1976) 17 Cal.3d 280, 295. Research indicates that students of color; students with disabilities; and lesbian, gay, bisexual, transgender, queer, intersex, and asexual students are more likely to be suspended for low-level subjective offenses, and that suspension segregates those students from their peers. Whether due to coincidence, unconscious bias, intentional discrimination or some other reason, disproportionate impacts are concerning.

While racial disparities in student discipline alone do not violate the law, ensuring compliance with federal nondiscrimination obligations may require an LEA to examine the underlying causes of disparities in its discipline practices. It is important for LEAs to analyze their data, investigate the causes of disproportionality and take steps to reduce the harmful consequences of disproportional discipline for students. Addressing unconscious bias of educators is an important piece of the puzzle. LEAs are encouraged to invest in implicit bias training for their educator workforce; please see the September 21, 2020, CDE news release at <https://www.cde.ca.gov/nr/ne/yr20/yr20rel77.asp> for more information.

Moreover, California’s amended Elementary and Secondary Education Act of 1965 (ESSA) State Plan requires Title I LEAs to describe in an Addendum to their Local Control and Accountability Plan (LCAP) how they will improve school conditions for learning and, specifically, *how they will support efforts to reduce the overuse of discipline practices that remove students from the classroom.* 20 U.S.C. § 6311(g)(1)(C)(ii). LEAs are therefore encouraged to commit resources to effectively implement alternative correction models, including restorative justice, positive behavior interventions and support, and other evidence-based approaches, which will have the goal of keeping students in school to the maximum extent possible. A copy of California’s amended ESSA State Plan is available at <https://www.cde.ca.gov/re/es/documents/essastateplanjan-22.docx>.

## I**mproving School Climate**

All students deserve to attend schools where they feel supported and safe and are able to access their education. A school environment that is free from discrimination is essential to meeting that goal. Disproportionality in student discipline may be perceived by students as discriminatory and may foreclose opportunities for students, push them out of the classroom and divert them from a path to success in school and beyond. In light of the importance of education to the community and to each child, schools should make the opportunity to receive schooling available to all students on an equal basis without any discrimination. Access to educational services is vital to ensuring that students are able to enter adulthood with the skills and tools necessary to be self-sufficient, productive, and contributing members of society. Taking any student out of the learning environment reduces their chances of contributing in the future and is proven to push them toward the criminal justice system, regardless of whether the absence is caused by a student’s own truancy or the imposition of a suspension or expulsion.

The Bipartisan Safer Communities Act of 2022 (Pub. L. No. 117-159, 136 Stat. 1313) provides historic funding, including $1 billion in grant funding, to help schools establish safe, healthy, and supportive learning opportunities and environments and $1 billion in funding to increase the number of mental health professionals in schools. In addition, the U.S. Department of Education has distributed $122 billion in American Rescue Plan (ARP) funding to states and school districts to help address students’ needs that resulted from the pandemic. With input from parents and communities, states and school districts may use ARP Elementary and Secondary School Emergency Relief and other ARP funds to help ensure nondiscriminatory access to programs in a variety of ways to meet students’ behavioral, mental health, and academic needs.

## Data-Driven Continuous Improvement to Strengthen Student Supports

LEAs need to address students’ holistic needs, whether students are struggling with trauma, disability, or the effects of socio-economic disadvantage. Since the passage of the Local Control Funding Formula, the state has engaged in the data-driven continuous improvement process, with actions to address student needs informed by robust stakeholder input and thorough root-cause analysis. Reducing unnecessary suspensions is part of this framework, with suspension data reported on DataQuest and in the California School Dashboard, and school climate is one of the eight state priorities. Every year, school and district communities should review their suspension data and analyze the underlying causes and adjust programming as needed to better support students, especially students of color disproportionately impacted by unnecessary suspensions. The California Collaborative for Educational Excellence is an important resource for our System of Support. The Collaborative’s website is at <https://ccee-ca.org/>.

Another important resource is the CDE LCAP web page at <https://www.cde.ca.gov/re/lc/>, which includes references to the eight state priorities, the continuous improvement process, stakeholder engagement, and the whole-child resource map.

## Accurate Data Reporting to CALPADS

Because of the adverse effects that result from suspensions and expulsions, the number of student offenses subject to discipline has steadily declined. The CDE applauds, recognizes and appreciates school administrators, teachers, and educational staff across California who work to administer student discipline fairly and provide a safe, positive, and nondiscriminatory educational environment for all students and a safe environment for educators. However, it is important that LEAs and individual schools comply with applicable rules when a student is taken out of the classroom. All removals from the classroom, whether pursuant to *EC* Section48910 or 48911, for “adjustment” purposes, must be reported to the CDE through the California Longitudinal Pupil Achievement Data System (CALPADS) as “in-school” suspensions (CALPADS Student Incident Result Code 100) or “out-of-school” suspensions (CALPADS Student Incident Result Code 111), depending on whether the student remains in school or not during the suspension.

## Suspension Defined

Suspension is defined in *EC* Section 48925 (emphasis added):

(d) “Suspension” means removal of a pupil 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 pupil will receive continuing instruction for the length of day prescribed by the governing board for pupils of the same grade level.

(2) *Referral to a certificated employee* designated by the principal to advise pupils.

(3) *Removal from the class*, *but without reassignment to another class or program, for the remainder of the class period* without sending the pupil to the principal or the principal's designee as provided in Section 48910. Removal from a particular class shall not occur more than once every five schooldays.

The three exceptions to the definition of suspension noted above need not therefore be reported in CALPADS. It should be noted that removal of a student from the class may, if appropriate, be combined with referral for advice under (d)(2).

It should also be noted that, under *EC* Section 48911.1, a suspended pupil may be referred to a supervised suspension classroom, for which the LEA may claim apportionment provided (1) the classroom is supervised by a credentialed teacher; (2) each student has access to appropriate counseling services; and (3) the supervised suspension classroom promotes completion of schoolwork and tests missed by the pupil during the suspension.

## Teacher Suspensions

*Education Code* (*EC*) Section 48910 allows suspension by a teacher for the specific, enumerated acts in *EC* Section 48900, but requires certain due process protections, including prompt notification to the parent or guardian and the holding of a parent-teacher or other required conference, with the school counselor or school psychologist if practicable and with a school administrator, if the teacher or the parent or guardian so requests.

In the event of a teacher suspension, the teacher *must*:

* Immediately report the suspension to the principal of the school and send the pupil to the principal or the designee of the principal for appropriate action.
* If the pupil is to remain on campus during that suspension, the pupil *must be under appropriate supervision*, as defined in policies and related regulations

adopted by the governing board of the school district. (But note the option of referral to a supervised suspension classroom, above, which does not interrupt the student’s education.)

* Teachers must ask the parent to attend a parent-teacher conference regarding the suspension.
* Pupils are prohibited from returning to the class from which they were suspended, during the period of the suspension, without the concurrence of the teacher and principal.
* Teacher suspensions are limited to the day of suspension and the following day.

Finally, teacher suspensions should not be considered “off-the-books” or “informal,” but rather *must* be reported to the CDE in CALPADS as discussed above, below and in *EC* Section 48910.

## Principal Suspensions

*Education Code* (*EC*) sections 48911 allows suspension for a maximum of five consecutive schooldays, by a school principal or district superintendent for the specific, enumerated acts in *EC* 48900. Section 48911 requires certain due process protections, including an informal conference between the student and the school official who referred the student to the principal for discipline, that describes the reason for the referral, including a statement of the alternatives to discipline previously attempted as required by *EC* 48900.5, and an opportunity to provide the student’s version and evidence in the student’s defense. Such informal conferences must be conducted *before* the imposition of disciplinary measures unless an “emergency situation” meeting the statutory definition exists, in which case the conference must be held within two days. In all cases, the principal must meet the notice requirements to inform parents, guardians, education rights holders, attorneys, social workers, and others as set forth in the statute. The suspension must be reported to the school district governing board. Moreover, principal and district superintendent suspensions should not be considered “off-the-books” or “informal,” but rather *must* be reported to the CDE in CALPADS. See additional details above, below and in *EC* Section 48911.

## Voluntary and Involuntary Transfers in Lieu of Discipline

See separate CDE guidance document on Overuse and Improper Use of Voluntary and Involuntary Transfers.

### APPENDIX

#### Summary of Key Statutes Governing Student Discipline

1. **Suspension and Expulsion Laws:**

1) ***Education Code* (*EC*) Section 48925(d)** **defines** “suspension” as removal of a pupil from ongoing instruction for adjustment purposes. In the case of a suspension by a teacher, *the teacher* *must* *report the suspension to the principal and send the pupil to the principal or the principal's designee as provided in Section 48910*. Removal from a particular class shall not occur more than once every five schooldays.

2) ***EC* Section 48910****authorizes** teachers to suspend pupils from class for the day and the following day. The teacher *must* immediately report the suspension to the principal of the school and send the pupil to the principal or the designee of the principal for appropriate action. *If the pupil is to remain on campus during that suspension, the pupil must be under appropriate supervision. Teachers must ask the parent to attend a parent-teacher conference regarding the suspension.* Pupils are prohibited from returning to the class from which they were suspended, during the period of the suspension, without the concurrence of the teacher and principal. Such suspensions *must* be reported to the CDE in CALPADS. See additional details above and in *EC* 48911.

3) ***EC* Section 48900** **prohibits** a pupil from being suspended or recommended for expulsion unless the superintendent of the school district or the principal of the school determines that the pupil has committed certain enumerated acts.

5) ***EC* Section 48900.6** **provides** that, as part of or instead of disciplinary action, a pupil may be required to perform community service on school grounds during school hours or, with written permission of the parent or guardian of the pupil, off school grounds, during the pupil's non-school hours.

5) ***EC* Section 48900(v) authorizes** school district superintendents and school principals *to use discretion to provide alternatives to suspension or expulsion* that are age appropriate and designed to address and correct the pupil’s specific misbehavior.

6) ***EC* Section 48900(w) provides** that the Legislature intends that (1) *alternatives to suspension or expulsion* be imposed against a pupil who is truant, tardy, or otherwise absent from school activities; and (2) that *the Multi-Tiered System of Supports*, which includes restorative justice practices, trauma-informed practices, social and emotional learning, and schoolwide positive behavior interventions and support, may be used to help pupils gain critical social and emotional skills, receive support to help transform trauma-related responses, understand the impact of their actions, and develop meaningful methods for repairing harm to the school community.

7) ***EC* Section 48900.5(a) states** *that suspension, including supervised suspension, shall be imposed only when other means of correction fail to bring about proper conduct* but authorizes a pupil, including a pupil with exceptional needs, to be suspended upon a first offense for certain acts (*not* including disrupting school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties) or the pupil’s presence causes a danger to persons.

8) ***EC* Section 48900.5(b)** **specifies** that *other means of correction include*, but are not limited to:

a) A conference between school personnel, the pupil’s parent or guardian, and the pupil.

b) Referrals to the school counselor, psychologist, social worker, child welfare attendance personnel, or other school support service personnel for case management and counseling.

c) Study teams, guidance teams, resource panel teams, or other intervention related teams that assess the behavior and develop and implement individualized plans to address the behavior in partnership with the pupil and their parents.

d) Referral for a comprehensive psychosocial or psychoeducational assessment, including creating an individualized education program or a 504 plan.

e) Enrollment in a program for teaching prosocial behavior or anger management.

f) Participation in a restorative justice program.

g) A positive behavior support approach with tiered interventions that occur during the school day on campus.

h) After-school programs that address specific behavioral issues or expose pupils to positive activities and behaviors, including, but not limited to, those operated in collaboration with local parent and community groups.

i) Community service, as specified.

**9) *EC* Section 48911 authorizes** the school principal or designee, or the district superintendent of schools, to suspend a pupil from the school for any of the reasons enumerated in Section 48900, and pursuant to Section 48900.5, for no more than five consecutive schooldays. Except in emergency situations constituting a clear and present danger to the life, safety, or health of pupils or school personnel, *before* imposing suspension, the principal or district superintendent *must* hold an informal conference with the pupil (“pupil” includes a pupil's parent or guardian or legal counsel – EC Section 48925(e)), including, whenever practicable, the teacher, supervisor or school employee who referred the pupil.

Where suspension occurs without the required conference owing to an emergency situation, the principal or designee, or district superintendent, *must* notify the pupil’s parent or guardian, or other party legally responsible for the pupil’s welfare, as applicable, of the pupil's right to a conference and the pupil's right to return to school for the purpose of a conference. This conference must be held within two schooldays, unless the pupil waives this right or is physically unable to attend for any reason, including, but not limited to, incarceration or hospitalization. The conference shall then be held as soon as the pupil is physically able to return to school for the conference. At the time of suspension, a school employee *must* make a reasonable effort to contact the pupil's parent or guardian, or other legally responsible party, as applicable, in person, by email, or by telephone. If a pupil is suspended from school, a school or district employee must provide written notification of the suspension to the parent or guardian, or other legally responsible party, as applicable. Such suspensions *must* be reported to the CDE in CALPADS. See additional details above and in *EC* 48911.

10) ***EC* Section 48911.1 authorizes** the principal or designee to assign a pupil suspended from a school for any of the reasons enumerated in *EC* sections 48900 and 48900.2 *to a supervised suspension classroom for the entire period of suspension if the pupil poses no imminent danger or threat to the campus, pupils, or staff,* or if an action to expel the pupil has not been initiated. *The teacher shall provide all assignments and tests that the pupil will miss while suspended. If no classroom work is assigned, the person supervising the suspension classroom shall assign schoolwork.*

11) ***EC* Section 48911.2. states** that schools should consider implementing at least one of the following if the number of pupils suspended during the prior school year exceeded 30 percent of the school's enrollment:

a) A supervised suspension program.

b) A progressive discipline approach during the school day on campus (as an alternative to off-campus suspension), using any of the following activities:

i) Conferences between the school staff, parents, and pupils.

ii) Referral to the school counselor, psychologist, child welfare attendance personnel, or other school support service staff.

iii) Detention.

iv) Study teams, guidance teams, resource panel teams, or other assessment-related teams.

**12) *EC* Section 49055** requires the CDE, on or before June 1, 2024, to develop evidence-based best practices for restorative justice practice implementation on a school campus and make these best practices available on the CDE’s website for use by LEAs to implement restorative justice practices as part of efforts to improve campus culture and climate. In developing best practices, the CDE’s must consult with school-based restorative justice practitioners; K-12 educators and pupils; community partners and members; nonprofit and public entities, to identify best practices for effective, evidence-based restorative justice practices in elementary and secondary schools.