



DISCIPLINE IN CALIFORNIA SCHOOLS: Legal Requirements and Positive School Environments

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PREFACE

The American Civil Liberties Union of Northern California (ACLU-NC) has a longstanding commitment to educational equity and ensuring that all California students are guaranteed their fundamental right to an education as promised under the California Constitution. Among the most serious of the issues facing our state's public education institutions is the "pushout" phenomenon, where students either leave school voluntarily or are forced to leave. Racially disparate and punitive discipline, among other things, underlies the phenomenon; we believe it to be one of the reasons California fails to graduate many of its students. Although inconsistent discipline is by no means the sole cause of the dropout crisis, it is certainly a significant contributor. ACLU-NC has long worked with the educational community — school administrators, principals, and teachers — to reach our common goals of educating students, protecting them from harm, and helping them reach their full potential through a meaningful and equal educational experience. In order to combat pushout, school discipline policies and practices must be fair and equitable — both in their writing and their implementation.

ACLU-NC's varied litigation, policy advocacy, and organizing experience gained through our school bias and pushout work has given us insight into some of the successful strategies employed by — as well as common mistakes made by — California school districts in implementing effective and fair school discipline. In general, schools with the least number of suspensions and referrals maintain clearly defined policies, and the principal and teachers have established protocol that enables them to handle individual cases of misbehavior consistently. On the other hand, schools with the highest number of suspensions and referrals tend to have rigid, yet vague, discipline policies that do not incorporate preventive measures or positive interventions. Schools that shift to clearly defined discipline policies will most likely not only reduce discipline referrals and improve school environment but also improve students' academic performance: schools that significantly lower their suspension and expulsion rates find that improved scholastic performance follows.

Discipline in California Schools: Legal Requirements and Positive School Environments is intended to help school districts develop and implement more successful school discipline policies and therefore reduce pushout. It is based on the work of the ACLU-NC and the expertise of other organizations and individuals committed to ending racially disparate discipline in our nation's schools. In particular, we want to acknowledge the excellent work of the following organizations: the Advancement Project; national American Civil Liberties Union; American Civil Liberties Unions of Florida and Washington; New York Civil Liberties Union; Dignity in Schools Campaign; UCLA Institute for Democracy, Education and Access; Southern Poverty Law Center; and Equity Project at Indiana University. *Discipline in California Schools* also incorporates the admirable work of the California Department of Education (CDE) to address school discipline and environment through CDE policy guidelines and resources, sample policies, and other materials.

This guide is intended to highlight successful approaches and common mistakes without purporting to cover all potential best practices and pitfalls.

We hope *Discipline in California Schools: Legal Requirements and Positive School Environments* will be useful in achieving the goal that the ACLU-NC holds in common with school administrators, principals, and teachers: California youth being able to graduate from elementary and secondary schools with the education they deserve.

Diana Tate Vermeire
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SUMMARY OF KEY RECOMMENDATIONS

Moving toward more effective discipline is a process that takes time and commitment. It would be impossible to put into place all of the recommendations *Discipline in California Schools: Legal Requirements and Positive School Environments* presents for effective and positive discipline policy and its implementation at once, particularly in light of the current economic crisis that has further decreased school funding in California. Accordingly, the most important policy recommendations presented in this guide are summarized here in order to provide a starting point for school districts (or for school administrators and principals) when considering policy changes.

Creating an Effective School Discipline Policy and Reducing School Exclusion

1. Adopt and implement policies designed to create a safe school culture where discrimination, harassment, and bullying are prohibited. Adopt a complaint procedure to allow students to report instances where they do not feel safe at school.
2. Adopt and implement alternatives to exclusionary discipline — discipline other than removal from a classroom or school, generally through suspension or expulsion — for non-emergency student misconduct.
3. Prohibit the use of “zero tolerance” policies that prevent a thoughtful response to student misconduct. Instead, set clear rules and expectations and use discipline as a means to teach appropriate behavior.
4. Limit the use of exclusionary discipline to the most serious incidents of student misbehavior that pose a threat to others or that are required under federal and/or California law, and prohibit academic penalties during suspension or expulsion.
5. Limit the use of School Resource Officers or other law enforcement interventions to emergency situations and provide clear policy guidelines for the presence of law enforcement personnel on campus.

Implementing an Effective School Discipline Policy and Measuring Success

6. Engage members of the school community, including students, parents, teachers, school staff, and administrators, in the creation of school discipline policy. On a quarterly basis convene a team representative of the school community to assess and monitor the discipline policy and to report its findings to the larger school community.
7. Based on the discipline policy created, adopt and implement a collective statement of guiding principles for school discipline that can be used to measure the appropriateness of any disciplinary action being considered.
8. Incorporate positive interventions and appropriate classroom management techniques into the daily operation of the school so that expectations are set and are part of the regular functioning of the school.
9. Measure the success of discipline policies and their implementation by regularly collecting and analyzing data to determine successful approaches and need for improvement.

SUCCESSFUL ALTERNATIVES TO TRADITIONAL SCHOOL DISCIPLINE

There are a number of approaches to disciplining students that help create a stronger sense of community and a more civil environment and avoid the common punishments of suspension or expulsion. Those approaches that have shown particular promise are summarized here, along with a brief description of how they work.

Positive Behavioral Interventions and Supports (PBIS): A proactive and data-driven approach to discipline. PBIS schools have successfully reduced office referral, raised academic achievement, and improved school climate by setting clear behavioral expectations, rewarding appropriate behavior, utilizing progressive discipline, and providing individualized interventions for students with chronic behavior problems.¹

- **Leadership Team:** A 10-15 person leadership team of administrators, teachers, school staff, and students attend a two- or three-day PBIS training where they learn how to create and communicate a list of school-wide behavioral expectations.
- **School-wide Support:** The larger school community then goes through a process to approve the list of expectations. When the list is approved, the school community commits to implementing and following the expectations it sets forth.
- **Data-Driven Decision Making:** The leadership team collects school-specific discipline data and uses it to identify and address common discipline problems and inform policy changes.

The United States Department of Education's Office of Special Education offers free information about implementing PBIS at www.pbis.org (see "How to Get PBS in Your School" at http://www.pbis.org/pbis_newsletter/volume_4/issue1.aspx). For examples of two school PBIS handbooks, visit Effective Educational Practices at <http://successfuleducationalpractices.org/success-stories>.

Restorative Justice: A community building process that aims to heal relationships between offenders, their victims, and their community. Restorative circles and restorative conferences bring affected parties together to discuss the problem or misbehavior and to find a solution or appropriate punishment. Justice is achieved when an offender repairs the harm she committed against another person and/or the school community. Teachers can model informal, impromptu circles as a means to diffuse minor classroom disputes. Eventually, students can be empowered to create their own problem-solving circles. Administrators can use restorative conferences to address serious discipline problems traditionally punished by suspension or expulsion. Conferences typically include the offender; the victim; relevant members of the school community; parents or guardians of the offender and the victim, if both are students; law enforcement, if necessary; and community members invested in the well-being of the offender or victim.

Training on restorative justice is widely available and relatively inexpensive. See www.SaferSanerSchools.org; www.RestorativeResources.org; and <http://DisciplineThatRestores.org/>.

Peer Mediation: Teaches students how to resolve disputes calmly and constructively. The process provides a forum where students in a dispute can voluntarily tell their stories to other students trained in mediation and then work as a group to reach an amicable solution.

- **Training and Supervision:** One or more teachers or counselors trained in mediation skills can coordinate the program. The coordinator(s) trains peer mediators, holds weekly or monthly check-in meetings with peer mediators, oversees peer mediation sessions, debriefs and follows up with participants, collects data on the program's impact, and keeps the larger school community informed about the success of the program.
- **Mediation Sessions:** Sessions vary in length from an hour to a couple of days and usually take place during recess, lunch, or afterschool. One or two mediators participate in conducting a session, as disputants typically communicate through a mediator rather than talking directly to each other.

Among resources available on incorporating peer mediation and conflict resolution into classroom curriculum and school-wide discipline are the following: Peace Education Foundation (<http://www.peace-ed.org>); Community Boards (<http://www.communityboards.org>); and Conflict Resolution Education Connection (<http://www.creducation.org/>).

INTRODUCTION

Successful schools provide a safe and welcoming environment where students have an opportunity to learn and teachers can devote their time to teaching. Discipline is an essential factor in this equation, yet educators are faced with numerous pressures and limited resources that make addressing the complex issue of school discipline difficult. Increasingly large class sizes coupled with students who are still maturing can make the task of teaching students how to get along with one another and engage in civil conversation — in addition to core academic subjects — seem unmanageable. Not surprisingly, teaching appropriate behavior and implementing thoughtful, proactive school discipline can be perceived as too costly and a secondary priority after academics and achievement tests. As a result, many schools adopt and implement strict discipline policies focused solely on punishment and removing misbehaving students from the classroom in an effort to maximize teaching time for the rest of the students.

Unfortunately, school discipline policies that emphasize swift and harsh punishment often work to the detriment of students and fail to make schools any safer. Despite a general consensus among experts on this point, there has been a proliferation of ineffective and harsh discipline policies, including “zero tolerance” policies that remove discretion from the discipline process, in response to extreme examples of school crime and violence. However, high-profile incidents of extreme violent crime on school campuses, though heavily covered in the press, are neither commonplace nor representative of the majority of discipline issues on California’s K-12 public school campuses. In fact, most school discipline is directed at minor instances of misbehavior that require school administrators and principals to respond in a manner that protects students’ fundamental right to an education² in addition to their due process rights.

Imposing strict punishment for all student misconduct without engaging the students themselves fails to address the underlying behavior and often leads to students being pushed out of the classroom. More often than not, students of color bear the brunt of these unproductive, strict discipline policies, as they are one and a half to three times more likely to be punished with school exclusion than their white peers.³ Students subject to removal from the classroom or school have been shown to be more likely to drop out or be pushed out of school altogether.⁴ According to the California Department of Education, California fails to graduate 34.7% of its black youth and 25.5% of its Latino youth, as compared to 12.2% of its white youth.⁵ As school administrators, educators, and the ACLU-NC agree, failing to educate and graduate our youth due to school pushout is contrary to the goal of public education, yet it occurs at an alarming rate and disproportionately affects youth of color.

Effective classroom management and school discipline are necessary for the efficient and safe functioning of any school and to ensure that students have the opportunity to learn. Education advocates agree that creating a positive school climate is in fact the most important component of having an effective discipline policy. The focus of school discipline, therefore, should be on prevention, intervention, and teaching appropriate behavior, so that extreme acts of violence or crime do not occur and students are respected and taught to respect others. A discipline policy focused on teaching appropriate behavior can address the root problems of misbehavior and create a safe environment. Moreover, good discipline policy that is well implemented positively influences not only the school environment but academic performance and student success.

Even in the face of dwindling resources, pressure to perform, and the general complexity of school discipline, schools can and do provide a school climate where students learn, teachers teach, and everyone feels and is safe. In order to create these conditions, a school must develop and implement thoughtful school discipline policies.

Discipline in California Schools: Legal Requirements and Positive School Environments is written for school administrators and principals. It has three main purposes:

- ◆ To help school districts understand and meet their obligations under California law with respect to student discipline;
- ◆ To outline specific ways for districts to ensure that their policies — whether existing or new — promote positive educational environments and do not unnecessarily push kids out of school; and
- ◆ To provide recommendations for how districts can implement discipline policies in ways that are inclusive, equitable, and effective.

This guide addresses best practices for school discipline generally while focusing on key areas where many school districts either violate the law or fail to use better practices to the benefit of the school community as a whole. *Discipline in California Schools* is not a comprehensive guide to school discipline policy in California, nor does it address discipline for alternative or continuation schools or very serious behavior problems, including violent crime. The guide does provide suggestions that districts can implement immediately and successfully, with no need for new laws or extraordinary expenditures.

Section I: Creating an Effective School Discipline Policy and Reducing School Exclusion covers aspects of creating a safe school culture by reducing discrimination and harassment, addressing bullying, and instituting a complaint process and covers the types of responses schools have used for disciplining students. The section also focuses on the specific situations of absences, “willful defiance,” and gang-related activities and disciplinary measures that can be taken, along with a discussion of police presence and law enforcement intervention. Each topic refers to specific provisions of the California Education Code⁶ and outlines relevant legal requirements. In addition, this section provides topic-by-topic policy recommendations for better practices that can help schools eliminate inconsistent and racially disproportionate discipline, improve school safety, and focus on educating and graduating youth.

Section II: Implementing an Effective School Discipline Policy and Measuring Success focuses on general practices and implementation procedures that can be applied in a variety of school settings. The policy recommendations offered in this section can be helpful for developing or updating school discipline policies. The section also outlines ways for school officials to collect data and monitor their success in improving school discipline policies and practices and otherwise working to create a positive school environment. The results of data analysis can be fed back regularly into a process of policy review and revision.

Safe and welcoming schools create a positive environment where students are respected and treat one another with respect, thus minimizing student misconduct and improving the environment for learning. Because they are responsible for the effective and safe operation of schools, school administrators must take appropriate measures to address student conduct that threatens the ability of a school to operate in such a manner. School discipline is a necessary component of school administration, and acts of violence and crime must be addressed quickly and with sufficient severity to ensure the safety of students and school personnel. However, the majority of instances involving school discipline relate to minor misbehavior, and a school’s response to any student misconduct must be aligned with the obligation to protect California public school students’ rights of due process. Accordingly, school administrators have an obligation to implement discipline in a thoughtful manner, use exclusionary discipline (i.e. the removal of a student from a classroom or school) only as necessary to ensure school safety and prevent the unwarranted criminalization of youth.

I. CREATING AN EFFECTIVE SCHOOL DISCIPLINE POLICY AND REDUCING SCHOOL EXCLUSION

CREATING A SAFE AND WELCOMING SCHOOL CULTURE

Student misconduct can be reduced by the creation of a safe school culture where students feel welcomed into their educational environment and are treated with dignity and respect once there. A safe school culture serves to protect both students and school personnel and creates an environment where learning can occur. However, students are sometimes subject to discrimination, harassment, and bullying at school.⁷ In most instances, school administrators are not aware of the extent of the discrimination and harassment that exist within their school sites. An important step toward eliminating discrimination, then, is to institute a process where complaints can be brought to the attention of school officials.

Discrimination and Harassment

Discrimination occurs in school when a student is not treated equally on the basis of his or her actual or perceived disability, gender (including gender identity), race or ethnicity, national origin, religion, or sexual orientation. Students can also be subjected to harassment at school on these bases, most often by their peers, but sometimes by school officials who either fail to prevent such harassment or who are active participants in it. California policy states that “all pupils have the right to participate fully in the educational process, free from discrimination and harassment” and that “California’s public schools have an affirmative obligation to combat racism, sexism, and other forms of bias, and a responsibility to provide equal educational opportunity.”⁸ In addition, the Legislature has stated its intent that “each public school undertake educational activities to counter discriminatory incidents on school grounds and, within constitutional bounds, to minimize and eliminate a hostile environment on school grounds that impairs the access of pupils to equal educational opportunity.”⁹

Race, Ethnicity, and National Origin Discrimination and Harassment

Schools must protect students from discrimination and harassment on the basis of race, ethnicity, and national origin. Such discrimination occurs when adverse action is taken against a student on the basis of her race, ethnicity, or national origin; or when action should be taken that is not taken because of a student’s race, ethnicity, or national origin. Discrimination and harassment on the basis of race include the following: the use of slurs or other demeaning language, exclusion from class or activities, and more severe discipline.

Gender Discrimination and Harassment

Schools must protect students from discrimination and harassment on the basis of gender. Gender discrimination occurs when adverse action is taken against a student on the basis of his or her gender, or when action should be taken that is not taken because of a student’s gender. “Gender” is defined to mean “sex,” and it also “includes a person’s gender identity and gender-related appearance and behavior, whether or not stereotypically associated with the person’s assigned sex at birth.”¹⁰ Discrimination and harassment on the basis of sex include the following: excluding a person from an activity or program on the basis of sex; the participation, exclusion, or denial of equivalent opportunity in athletic programs on the basis of sex; and any similar exclusion on the basis of parental or pregnancy reasons.¹¹ Discrimination and harassment on the basis of gender identity would also include, for example, a requirement that students adhere to stereotypical gender norms or gendered dress codes.

Sexual Harassment

Schools must protect students from sexual harassment. Sexual harassment includes “unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature” if submission to or rejection of such conduct affects academic status or is used as the basis for any academic decision.¹²

Sexual Orientation Discrimination and Harassment

Schools must protect students from discrimination and harassment based on a student’s actual or perceived sexual orientation or on the actual or perceived sexual orientation of a person or group the student associates with (such as the student’s parents).¹³ Sexual orientation discrimination occurs when adverse action is taken against a student on the basis of his or her sexual orientation, or when action should be taken but is not taken because of a student’s sexual orientation. Instances of sexual orientation discrimination or harassment include: the use of anti-gay slurs or other demeaning language and requirements that students adhere to stereotypical gender norms or dress.

Disability Discrimination and Harassment

Schools must protect students from discrimination and harassment on the basis of actual or perceived disability. Disability discrimination can occur when a student does not receive a reasonable accommodation (or a modification of school policy) to meet his or her needs as adequately as a student without a disability, or when she is not educated in the most integrated setting.¹⁴

→ Policy Recommendations: Discrimination and Harassment

- ◆ Adopt clearly defined non-discrimination and anti-harassment policies that specifically list all the forms of bias that school districts have an affirmative obligation to combat (e.g., discrimination and harassment based on race, ethnicity, national origin, gender, sexual orientation, and disability) and provide notice to students, parents, teachers, and school staff that discrimination and harassment will not be tolerated.
 - ◆ Clearly define racial discrimination and harassment, gender discrimination and harassment, sexual harassment, sexual orientation discrimination and harassment, and disability discrimination and harassment in these policies to ensure that students and staff understand what constitutes these forms of discrimination and harassment and what behavior is prohibited.
 - ◆ Require teachers and school staff to intervene, when it is safe to do so, or take immediate steps to get additional aid to intervene in any incident of discrimination or harassment they witness. In addition, teachers and school staff should be required to report any incidents they witness.
- ◆ Use district- and school-wide training for students and staff in cultural competency, anti-bias, anti-bullying, and conflict resolution to help students and staff appreciate diversity in their school, understand what discrimination and harassment are, comprehend the negative impact discrimination and harassment have on those who experience it, and understand how they can be involved in addressing problems within their schools.
- ◆ Create and implement programs that enlist student mediators to provide a positive influence on their peers and to assist in deescalating conflicts within schools.¹⁶
- ◆ Provide counseling services for victims of discrimination or harassment and training for offenders.

Legal Requirements Regarding Discrimination and Harassment: The California Education Code

According to the law, “No person shall be subjected to discrimination on the basis of disability, gender, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes.”¹⁵ [section 220] The part of the Education Code commonly referred to as the *Sex Equity in Education Act*, prohibits sex discrimination in elementary and secondary school classes and courses and school-sponsored athletic programs. [section 221.5 and following] In particular, it requires educational institutions to do the following:

- ◆ Adopt a written policy on sexual harassment, including “information on where to obtain specific rules and procedures for reporting charges of sexual harassment and for pursuing available remedies”;
- ◆ Provide a copy of the sexual harassment policy to students as part of any orientation;
- ◆ Provide a copy of the sexual harassment policy to school staff;
- ◆ Display the sexual harassment policy in prominent locations throughout schools. [section 231.5]

The part of the Education Code commonly referred to as the *Hate Violence Prevention Act*, requires the State Board of Education to adopt policies against discrimination and hate violence, as well as develop guidelines for nondiscriminatory instructional and counseling methods. [section 233 and following]

The part of the Education Code commonly referred to as the *Safe Place to Learn Act*, mandates that schools do the following:

- ◆ Adopt policies against discrimination and harassment;
- ◆ Implement a process for receiving and investigating complaints;
- ◆ Publicize and translate policies;
- ◆ Post policies in all schools and offices;
- ◆ Documentation of complaints for at least one year;
- ◆ Ensure complainant is protected from retaliation and identity is confidential as appropriate; and
- ◆ Identify an officer to ensure compliance. [section 234 and following]

Preventing Bullying

Schoolyard bullying has long been a problem faced by youth as well as the principals and school staff who try to address it. Over the years, the extent, severity, and nature of school bullying has changed, particularly in light of technology (e.g. cyber bullying). Bullying is the repeated and intentional intimidation or harassment of another student for the purpose of harming the weaker person.¹⁷ Bullying behavior can include, but is not limited to, threatened or actual physical contact or assault, taunting or other verbal assaults, and social isolation.¹⁸

The negative impact of unaddressed bullying is felt not only by the bullied students, who are often at a greater risk of harming themselves or others, but by the rest of the school community and the school budget. Students regularly subjected to bullying are often afraid to go to school, frequently fail to attend specific classes or school altogether, and regularly suffer academically because of an inability to focus or because of attendance problems. The larger school community is affected because the school environment becomes one of fear and intimidation and because there is a loss of revenue when attendance drops.¹⁹ School administrators should take action to address instances of bullying to protect students and to prevent a school environment that tolerates such behavior.

Legal Requirements Regarding Bullying: The California Education Code

Bullying, including cyber bullying, directed toward a pupil or school personnel is a suspendable offense. [section 48900(r)]

→ Policy Recommendations: Bullying

- ◆ Adopt and implement a clearly defined bullying prevention policy that provides notice to students, parents, and staff that bullying will not be tolerated. The policy should further require teachers and school staff to intervene, when it is safe to do so, or take immediate steps to get additional aid to intervene in any incident of bullying they witness.
- ◆ Provide counseling by teachers or school counselors for bullying victims and trainings for offenders.
- ◆ Provide annual student, teacher, and school staff trainings on inclusive school environments, anti-bias, anti-bullying, and conflict resolution.

Complaint process

Implementing a complaint process is an essential component to monitoring activity on campus that may violate a school's non-discrimination, anti-harassment, and anti-bullying policies. Complaint procedures provide individuals with a mechanism for informing school officials of serious incidents of misconduct by students, teachers, school staff, or administrators.

Legal Requirements Regarding Compliant Processes: The California Education Code

The California Department of Education is required to assess as part of the Categorical Program Monitoring process whether local educational agencies do the following:

- ◆ Implement a process for receiving and investigating complaints of discrimination and harassment;
- ◆ Publicize and translate anti-discrimination and anti-harassment policies, including information on how to file a complaint;
- ◆ Maintain complaint records and their resolution for one review cycle; and
- ◆ Protect the identity of a complainant and protect complainants from retaliation. [section 234.1]

→ Policy Recommendations: Complaint Process

- ◆ Develop an effective complaint policy and procedure that includes the following:
 - ◆ A clear statement of unacceptable and reportable behavior, including discrimination; race, ethnicity, national origin, gender, sexual orientation, disability, and sexual harassment; and bullying;
 - ◆ Several methods, including an anonymous one, for reporting incidents of unacceptable behavior;
 - ◆ A process for victims and witnesses to report incidents of unacceptable behavior;
 - ◆ A clearly stated process and timeline for reviewing and addressing complaints in a timely manner, including a response to complainants with a description of what action was taken in response to the complaint, and including an appeals procedure; and
 - ◆ Clear statements of confidentiality and that complainants will be protected from retaliation.
- ◆ Provide notice annually to students, parents, teachers, and school staff regarding the complaint policy and procedure and post such notices around the school site.
- ◆ Designate a specific individual who will monitor and assess complaints to ensure that they are addressed in a timely manner, evaluate any trends, and facilitate solutions to systemic problems.

A COMMON-SENSE APPROACH TO ZERO TOLERANCE

The overall picture of school exclusion is troubling, and the disproportionate impact on students of color is alarming: students of color are one and a half to three times more likely to be punished with school exclusion than their white peers.²⁰ Reducing reliance on school exclusion for low-level incidents that do not threaten safety and eliminating related racial disparities are critical steps in ensuring all California students receive a quality education and a high school diploma. In addition, particular care needs to be taken to ensure both that educational requirements of students with special needs are met and that students with special needs are not disciplined for behavior associated with their disabilities.

Zero Tolerance

Positive school environments require a thoughtful approach to discipline that permits consideration of the circumstances causing or leading up to student misbehavior. However, over the past decade, many schools have adopted some form of “zero tolerance” disciplinary policy.²¹ These policies remove discretion traditionally exercised by school officials by mandating non-negotiable penalties, such as suspension or expulsion, for specific discipline code violations. School administrators have implemented these strict policies to deter students from committing violations as well as to demonstrate the school’s commitment to safety.

Sadly, zero tolerance policies have had a disproportionate impact on students of color and have not been shown to be an effective mechanism for most disciplinary issues. Problems with implementing zero tolerance policies have led many schools and states to revisit their policies. In California, for example, both the California PTA and the California Department of Education have produced materials promoting alternatives to zero tolerance policies.²²

➔ Policy Recommendations: Zero Tolerance

- ◆ Avoid using “zero tolerance” policies for behaviors beyond what the law actually requires and standardize the procedure by which school officials make decisions about punishment.
- ◆ Emphasize individualized responses and support educators by offering training and professional development opportunities.²⁵
- ◆ Adopt intervention philosophies and programs to improve overall school climate and to ensure consistent, equitable, and fair discipline.²⁶ See *Successful Alternatives to Traditional School Discipline*, page 3.
- ◆ Monitor disciplinary referrals to ensure that students are not being unfairly singled out.²⁷ Collect disciplinary data disaggregated by race/ethnicity and monitor and address any racial or ethnic disproportionality that is occurring. See *Data Collection and Monitoring*, page 22.

Legal Requirements Regarding Zero Tolerance: The California Education Code

There are only five situations in which school administrators have no discretion and must immediately suspend a student and recommend expulsion.

The principal or the superintendent of schools must immediately suspend and recommend for expulsion any student who the school administrator determines committed any of the following acts at school or at a school activity off of school grounds:

- (1) Possessing, selling, or otherwise furnishing a firearm;
- (2) Brandishing a knife at another person;
- (3) Unlawfully selling a controlled substance²³;
- (4) Committing or attempting to commit a sexual assault or committing sexual battery²⁴; or
- (5) Possession of an explosive.

[section 48915(c)]

A one-year expulsion is required for a student expelled for any of the above reasons, although an earlier date for readmission may be set on a case by case basis. [section 48916(a)]

In all other instances, school administrators have discretion to decide whether or not to punish a student with exclusionary discipline.

See *Appendix A: Expulsion Flow Chart*, page 26.

Exclusionary Discipline

Exclusionary discipline — most commonly suspension and expulsion — punishes misconduct by removing students from school rather than working with them to correct problematic behavior while they still participate in the school community. In recent years, use of suspension, expulsion, and involuntary transfer has increased dramatically, despite research demonstrating the increased likelihood of students subjected to exclusionary discipline to be cited for future behavior problems, have academic difficulties, and drop out of school.²⁹

Suspension and Expulsion

California schools frequently use suspension or expulsion to address student misconduct. For less serious offenses, however, there are more constructive alternatives to these exclusionary methods that keep students in school while still addressing misconduct. Suspension, in particular, should only be used as a tool of last resort. As described above in regard to Zero Tolerance, there are *only* five situations in which California law requires school administrators to immediately remove from school any student found to commit one of those five specific, serious offenses. Although the law requires such swift and drastic action in order to ensure school safety, it also requires school administrators to investigate these serious incidents to ensure that the student accused actually behaved in such a manner.

Legal Requirements and Limits Regarding Suspendable and Expellable Offenses: The California Education Code

Suspendable and Expellable Offenses

Students *may* be suspended for various conduct that includes threatening, causing or attempting to cause physical injury to others; using tobacco or tobacco products; committing theft; and possessing drugs or alcohol. In limited circumstances, conduct subject to suspension can lead to an eventual recommendation for expulsion. [sections 48900, 48900.2, 48900.3, 48900.4, and 48900.7] **See Appendix B: Discretionary Suspension Flow Chart, page 28.**

Students *may* be expelled for various conduct that includes brandishing a knife, possessing an explosive, participating in an act of hate violence; and making a terroristic threat. [sections 48915(a), (b), and (e); 48900(a)-(r); 48900.2; 48900.3; 48900.4; and 48900.7] **See Appendix A: Expulsion Flow Chart, page 26.**

Limits on Suspension and Expulsion

Suspendable and expellable offenses must be related to school activity or attendance. [section 48900(s)] This means that a student cannot be disciplined for off-campus conduct that is unrelated to a school event.

A student may not be suspended for more than five consecutive days, unless an expulsion is recommended. Expulsion can be recommended *only after* a meeting in which a parent or guardian is invited to participate *and* the school district determines that the student's presence at the school would cause a danger to persons or property or threaten disrupting the instructional process. [section 48911]

Procedural Protections for Suspension and Expulsion

School administrators are required to try *alternative measures* before imposing suspension, unless a student has committed one or more of the offenses listed in section 48900(a)-(e) or her presence causes a danger to persons or property or threatens to disrupt the instructional process. [section 48900.5]

A student can be expelled based on a finding that the student committed an act for which expulsion can be imposed and either one or both of the following is true: (1) other means of correcting the student's behavior are not feasible or the school has tried and failed to correct the behavior, or (2) due to the nature of the act, the student's presence at the school is dangerous to the student or to others. [sections 48915(b) and (e)]

At the time of expulsion for any offense other than those listed in section 48915(c) school administrators must set a date no later than the last day of the semester following the semester the expulsion occurred whereby the student will be reviewed for readmission to a school maintained by the district or the last school the student attended. [section 48916(a)]

School administrators must create a rehabilitation plan tailored to the expelled student's specific needs. [section 48916(b)]

School administrators must provide the student and her guardian a copy of the procedures for readmission at the time of the expulsion. [section 48916(c)]

The California Education Code incorporates federal law requirements that a student with a disability may be suspended or expelled and that administrators must hold a meeting to determine whether the misbehavior is a "manifestation" of the student's disability.³⁰ [section 48915.5]

For additional information on legally required due process rights, *see* Due Process, page 13.

“The actual benefits of removing a child from school for disciplinary reasons are in no way sufficient to counterbalance other concerns created by those intervention.”

—Russell J. Skiba and M. Karega Rausch, *Zero Tolerance, Suspension, and Expulsion: Questions of Equity and Effectiveness*.²⁸

→ Policy Recommendations: Suspendable and Expellable Offenses

- ◆ Limit the use of suspension and expulsion to egregious violations of school policy that pose a clear danger to students and/or the school as outlined by federal and California law.
- ◆ Create a clear procedure for determining whether suspension or expulsion is appropriate in any given instance.
- ◆ Provide alternatives to expulsion when expulsion is not required by law and an alternative is appropriate, including in-school suspension.
- ◆ Provide alternatives to suspension in accordance with the California Education Code’s mandate that suspension should generally be imposed only after alternative forms of discipline have been employed.³¹
 - ◆ In the event suspension is deemed the appropriate discipline tool, implement in-school, afterschool, and weekend suspension programs to keep students in school and prevent them from losing important class time.³²
- ◆ Provide regular training for school administrators about appropriate use of and alternatives to suspension and expulsion.
- ◆ Establish policies for progressive suspension for the same type of repetitive misconduct (i.e. one-, three-, and five-day suspensions for third, fourth, and fifth incidents, respectively).
 - ◆ For example, repeated tobacco use should result in alternatives to suspension for at least the first and second violation. For three or more violations, progressive suspension should be used, starting ideally with a one-day suspension in-school or after-school for the same type of violation.
 - ◆ In order to give notice and teach appropriate behavior, discipline for the same type of misconduct should progress from least to greater disciplinary action, so the student understands the ramifications of her actions. A student who repeatedly uses tobacco should be subject to progressive discipline for that behavior. If she subsequently talks back to a teacher, she should be subject to separate progressive discipline because the misconduct is different.
- ◆ Prohibit academic penalties during the imposition of suspension, thus requiring teachers to provide students with their academic work during the suspension and to provide an opportunity to make up work without penalty. Such steps will help prevent students from falling behind academically and allow them to reintegrate faster.³³
- ◆ Create a clear procedure for challenging a decision to impose exclusionary discipline and provide adequate and regular notice of the procedures to students, parents, teachers, and school administrators.
- ◆ All disciplinary policies should clearly state that students may not be disciplined for behavior connected to their disability and that parents should be consulted prior to any disciplinary procedure involving a student with disabilities.³⁴

See Appendix C: Ideal Discretionary Discipline Flow Chart Flow Chart, page 29.

Alternatives to Exclusionary Discipline

The Southern Poverty Law Center has identified several successful alternatives to suspension or other forms of exclusionary discipline for student misbehavior that does not require removing the student from school in order to ensure safety of the school community.³⁵

Emphasize Behavioral Expectations

- Reemphasize behavioral expectations at the time the student misbehaves.
- Employ behavior contracts to establish and reinforce behavioral expectations.

Collaborate with Parents/Guardians

- Create a protocol for involving parents in discipline issues.
- Hold a meeting with a student and his or her parent/guardian to provide feedback on misbehavior.

Model Constructive Conflict Resolution

- Mediate conflicts between students and/or students and staff.
- Use restorative justice circles to resolve disputes.

Address the Root Cause of Misbehavior

- Require students to attend workshops on anger management or building self-esteem.
- Refer misbehaving students to a counselor, social worker, or behavior interventionist and/or arrange for students to receive services from a counseling, mental health, or mentoring agency.

Keep Students in Schools

- Require students to attend in-school suspension during lunchtime, afterschool, or on weekends, during which time they work on homework. Do not remove students from class as punishment for being tardy or misbehaving.
- Adjust the student's class schedule or placement to maximize academic and behavioral improvement.

Keep Students Accountable

- Match at-risk students with an adult mentor at school with whom they can check in at the beginning and end of each school day.
- Require daily or weekly check-ins with an administrator for a set period of time.

Use Alternatives that Teach Good Behavior

- Require students to perform community service.
- Require students to engage in a reflective activity, such as writing an essay about his/her misbehavior and how it affected others and/or the school community, and work with students to choose an appropriate way for him/her to apologize and make amends to those harmed or offended.

Involuntary Transfer to Continuation School

An involuntary transfer to a continuation school occurs when a student is transferred to an alternative educational program without his or her consent. Like expulsion and suspension, transferring students to an alternative program is intended to be a last resort. While California currently permits such transfers, the Education Code requires meeting several procedural safeguards to initiate and complete the transfer process legally.

➔ Policy Recommendations: Involuntary Transfer to Continuation School

- ◆ Limit the use of involuntary transfers to continuation schools to those most serious offenses or repeated offenses that other attempts to correct behavior have failed to remedy.
- ◆ Adopt clear protocols for the use of involuntary transfer and ensure that such protocols comply with the Education Code.
- ◆ Provide school administrators with regular training as to the appropriate use of involuntary transfer.
- ◆ Adopt a policy for returning involuntarily transferred students to a regular comprehensive high school as soon as possible and with minimum procedural requirements to hinder such a return.

Legal Requirements for Involuntary Transfer to Continuation School: The California Education Code

The governing board must adopt rules for involuntary transfers. The rules must include the following provisions:

Necessary Steps Prior to Imposition of Involuntary Transfer

- ◆ Involuntary transfer may be based on any suspendable or expellable offense as well as habitual truancy or irregular attendance.
- ◆ Unless the principal determines that the student's presence causes a danger to persons or property or threatens to disrupt instruction, involuntary transfer to a continuation school should only be imposed after other means to improve student behavior have failed.

Limits on Involuntary Transfer

- ◆ Involuntary transfer to a continuation school can not extend beyond the end of the semester following the semester during which the transferable offense occurred, unless the local governing board adopts a procedure for yearly review of the involuntary transfer at the request of a student or a student's parent(s) or guardian(s).

Procedural Protections for Involuntary Transfer

- ◆ The school must send written notice to the student and parent providing an opportunity to request a meeting prior to the transfer. If the student or parent requests a meeting after receiving the notice, a meeting must be held where the student or their representative has a right to do the following:
 1. Inspect all documents on which the school is basing its decision;
 2. Question the school's evidence and any witnesses the school uses;
 3. Present their own evidence and witnesses; and
 4. Have an advocate, interpreter, and/or witnesses at the meeting.
- ◆ If the school board decides to transfer a student involuntarily, the school district must send the student and their parent or guardian written notice of its decision. This notice must include:
 1. The reasons for the decision;
 2. The facts to support the reasons; and
 3. Whether the decision will be reviewed periodically and, if so, the procedure for this review.
- ◆ To avoid prejudice and bias, no one from the student's school may be involved in the final transfer decision. The final decision must be made by school district personnel and/or staff from other schools. [section 48432.5]

Due Process

An essential element of ensuring school safety and implementation of appropriate school discipline is the creation of strong due process protections that generate trust and ensure fair and just results in discipline proceedings. Providing strong procedural protections, such as legally required parental notification, discipline hearings, and appeals processes, can go a long way to building a trusting and engaged school community. Due process protections also help to ensure fair and equitable discipline and to prevent denial of students' fundamental right to education.

→ Policy Recommendations: Due Process

- ◆ Require that each discipline referral and/or write-up include a detailed description of the behavior resulting in discipline. For suspension and expulsion, the description of the misconduct should also state which legal category the behavior falls under.
- ◆ For example, a discipline referral for a student who repeatedly curses should include a detailed description of the behavior, including specific language used and to whom it was directed, and state the fact that suspension is pursuant to California Education Code section 48900(i), which makes "habitual profanity" a suspendable offense.
- ◆ Provide notice regarding students' due process rights and discipline procedures to students and parents in their native language, if possible, even when not required by law.
- ◆ Provide information to students and parents about the right to a timely hearing — and the right to postpone such a hearing — when a student has been recommended for expulsion. Provide notice to students and parents of the right to have legal representation at an expulsion hearing.
- ◆ Provide or permit interpreters to attend any meetings with parents whose native language is other than English to ensure better communication and full understanding of the discipline action taken.

Legal Requirements Regarding Due Process: The California Education Code

Once exclusionary discipline has been initiated, the student(s) must be informed of the potential consequence and their due process rights under California law. These requirements include those set forth in the following sections of the California Education Code:

- ◆ Suspension: section 48911;
- ◆ Expulsion: section 48918;
- ◆ Expulsion Appeal: section 48919; and
- ◆ Involuntary Transfer: section 48432.5.

When 15% or more of the student body speak a primary language other than English, "all notices, reports, statements, or records sent to the parent[s] of guardian[s] of any such pupil by the school or school district shall...be written in the primary language." [section 48985]

RESPONDING APPROPRIATELY TO COMMON STUDENT MISBEHAVIORS

This section focuses on three areas of student conduct for which school administrators often either fail to respond appropriately to the misbehavior, impose excessive discipline for certain conduct, or fail to provide clear guidance for identifying and addressing certain types of conduct.

Absences, Truancies, and Tardiness

School attendance is critical to a student’s ability to learn and to exercise her fundamental right to an education. Students who are habitually absent, truant, or arrive late to school need to be counseled and encouraged to attend school. However, too often students are subjected to exclusionary discipline as the means of addressing attendance issues. Imposing suspension or expulsion in response to attendance problems not only fails to improve student attendance but also increases the likelihood that a student will drop out of high school.³⁶

California law recognizes the ineffectiveness of exclusionary discipline for dealing with attendance problems and states that frequent absences, truancies, or tardiness should be addressed with “alternatives to suspension or expulsion.”³⁷

Legal Requirements Regarding Absences, Truancies and Tardiness: The California Education Code

The law states that “alternatives to suspension or expulsion” should be used to address attendance problems. [section 48900(w)]

The law also describes a progressive system of punishment for truancies starting with giving a student written warning and assigning her to weekend makeup classes. [section 48264.5]

A student cannot be categorized as a “habitual truant” unless an appropriate officer or employee, after filing a report, has made a conscientious effort to hold a conference with the student’s parent or guardian. [section 48262]

→ Policy Recommendations: Absences, Truancies and Tardiness

- ◆ Use the California Education Code’s “alternatives to suspensions and expulsions” standard for tardy or truant students or students with attendance problems, using alternatives to suspension or expulsion such as counseling, mentoring, working directly with parents, and/or other interventions that help identify and address the needs and behaviors of the student.³⁸
- ◆ Implement, use, and replicate effective proactive intervention strategies, such as positive behavior support, to improve student attendance and reduce tardiness.³⁹ See Successful Alternatives to Traditional School Discipline, page 3.

“Willful Defiance”

According to the California Education Code, a student may be suspended or expelled if she “disrupted 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.”⁴⁰ Unfortunately, the law does not define “disruption” and “willful defiance.” Similarly, although students may be suspended or expelled for “habitual profanity,”⁴¹ that offense is also not defined. School administrators, therefore, operate without state guidance when determining what behavior warrants suspension under these provisions. This subjective decision-making can lead to expulsion or suspension for these infractions being imposed inconsistently or excessively.

Perhaps because of the lack of definition, “willful defiance” is the most-often cited offense for expulsions from school in California.⁴² This fact is especially troubling when coupled with statewide statistics on racially disparate application of discipline. In California public schools, African-American students are proportionately twice as likely to be suspended as their white peers.⁴³ Moreover, national research shows that students of color are disproportionately referred for offenses of defiance, disobedience, and disrespect.⁴⁴

The high rate of suspension for “willful defiance” and accompanying racial disparities can be reduced by proactive school administrators. For example, in response to community complaints that the infraction of “disobedience” was overused, especially with respect to students of color, the Chief Academic Officer of Seattle Unified School District issued a memorandum in 2001 defining what constituted a violation of the district’s “disobedience” rule. Subsequently, the Seattle School District experienced a dramatic reduction in the use of “disobedience” as a basis for discipline and improved clarity and accuracy in student disciplinary notices and reports.⁴⁵ The Seattle turnaround exemplifies how school administrators can improve school disciplinary outcomes by communicating standards and priorities; no additional resources were needed to bring about this positive change.

➔ Policy Recommendations: “Willful Defiance”

- ◆ School superintendents and principals should define “willful defiance” to the fullest extent possible for their district or school and educate school personnel about the appropriate use of suspension or expulsion as defined in section 48900(k). The memorandum issued to Seattle Unified School District personnel — along with advocacy materials by the ACLU of Washington — is instructive as to how to define “willful defiance” in California:
 - ◆ “Willful defiance” may occur when:
 - A student’s “disruption” or “defiance” has an impact on the effective or safe functioning of the school, such as continuing to remain at the scene of a fight or to instigate a disturbance after being told to stop the behavior; or
 - Repeated disobedience to school personnel when other interventions have not been successful in modifying the misbehavior.
 - ◆ “Willful defiance” does not occur when:
 - A student fails to obey the valid authority of school personnel once in a non-safety-related incident;
 - A student refuses to give her name in a non-safety-related incident;
 - A student walks away from school personnel in a non-safety-related incident; or
 - A student was not reasonably aware of a direction given by school personnel (i.e. in a noisy room, hearing problems or other disabilities, language limitations, etc.).⁴⁶
- ◆ School superintendents and principals should define “habitual profanity or vulgarity” to the fullest extent possible for their district or school and educate school personnel about the appropriate use of suspension or expulsion for this behavior.
- ◆ The discipline record of any student punished for “willful defiance” should explicitly state the specific conduct that resulted in discipline. Such detailed information will enable the student, parents, principal, and school administrators to understand what conduct led to the discipline so that it can be addressed and more appropriate behavior taught.
- ◆ Do not use the behaviors described as “willful defiance” as add-on or catchall offenses; if a student is disciplined for a more specific offense(s), only the specific offense(s) should be on her record.
- ◆ “Willful defiance” should not be used to punish attendance issues, including tardiness or truancy, failure to do homework, or habitual profanity.

Legal Requirements Regarding Willful Defiance: The California Education Code

A student should be suspended from school or recommended for expulsion only if the student disrupts school activities or willfully defies the *valid authority* of supervisors, teachers, administrators, or other school personnel *in the performance of their duties*. [section 48900(k)]

Suspension or expulsion is permitted for committing an obscene act or habitual profanity or vulgarity. [section 48900(i)]

School administrators have the discretion to offer students alternatives to suspension, such as counseling and anger management. [section 48900(v)]

Gang-related Activity

School administrators in California are increasingly dealing with real or perceived gang problems on their campuses. Accordingly, many school discipline policies include references to “gang-related” offenses, particularly “gang-related clothing” and “gang-related conduct.” Too often such references provide little by way of example and fail to clearly articulate what is considered to be “gang-related” in any meaningful way. Unfortunately, these general references without further guidance as to what realistically signals gang affiliation or conduct can lead to racial profiling.

Vague provisions that provide neither definitions nor objective criteria to determine what is considered “gang-related” leave students and parents without sufficient guidance to adhere to school policy. Moreover, school personnel are left in the precarious and difficult position of trying to fairly and consistently administer a rule with severe — and sometimes criminal — consequences based on insufficient information. To avoid unworkable school policies in this area, school districts should, according to one court decision, “define with some care” the ‘gang-related activities it wishes students to avoid,’ with “restricting definitions” and “meaningful guidance for those who enforce it.”⁴⁷

→ Policy Recommendations: Gang-Related Activity

- ◆ Clearly define what symbols, accessories, clothing, or other items are considered prohibited, “gang-related” dress or clothing, and maintain a list of these items. Provide the list to parents and students — in their primary language — at the beginning of each school year and prior to the enforcement of any changes to the list. Items not on this list should not be considered “gang-related.” Do not include items on the list that are not actually related to gang activity, as that would both undermine the credibility of the school’s efforts on this problem and jeopardize the free expression rights of its students.

Legal Requirements Regarding Gang-Related Activity: Federal Law and the California Education Code Federal Law

Rules regulating gang-related activity must clearly and specifically define prohibited behavior. The primary function of a rule is to provide students with notice of what behaviors are considered unacceptable. If a student cannot understand a rule because it is too vague, she cannot conform her behavior accordingly. According to federal law, students cannot be punished for failing to follow a rule that is so vague that it does not provide adequate notice.⁴⁸

The California Education Code

“Gang-related apparel” must be defined as part of any schoolwide dress code. The definition of “gang-related apparel” must be limited to such clothing that “reasonably could be determined to threaten the health and safety of the school environment.” [section 32282]

The California Education Code is not instructive as to how dress codes should be implemented or enforced, although it does provide guidance for the implementation of a schoolwide uniform requirement and a corresponding method for parents to opt out of such a uniform requirement. [section 35183]

- ◆ Provide adequate notice to students of precisely what conduct and apparel are prohibited.⁴⁹ This means that schools should not have vague or overly broad policies, such as placing a wholesale ban on certain conduct (i.e. hand signals), colors (i.e. the color red), or types of clothing (i.e. hooded sweatshirts).
- ◆ Schools may prohibit specific conduct or clothing that has been identified by law enforcement or gang experts as affiliated with an actual gang; however, there should be a reasonable basis for identifying such conduct or clothing as gang affiliated.
- ◆ Require that all dress code provisions, including items prohibited as “gang-related,” are applied equally to all students and are based on the objective characteristics of the prohibited item. The policy should clearly state that students’ clothing shall not be identified as gang-related by virtue of the student’s race, national origin or ancestry, friends, areas of the school frequented by the student, or geographic area where the student lives.
- ◆ Eliminate “gang enhancement” policies that allow for suspension, expulsion, or involuntary transfer on a first offense when that offense is gang related. Students should be disciplined according to the underlying prohibited conduct – fights, dress code violations, other infractions, etc. – using the normal progressive disciplinary rules. Other interventions, such as individual and family counseling, anger management, and/or mentoring programs are appropriate to address student behavior that may indicate gang involvement or association.

- ◆ Prohibit the use of “gang contracts” that require students to sign statements related to suspected gang membership or activity. Students are generally not informed of their rights or of the significant legal ramifications posed by signing these documents prior to doing so.
 - ◆ Gang contracts can take a number of forms, the worst of which require students to admit in a legal document to being a gang member, and to promise to quit the gang. Other contracts simply imply gang membership, but all make students promise to stop wearing certain clothing and/or participating in activities deemed to be gang affiliated.
 - ◆ These “gang contracts” are often used by law enforcement to label certain youth as gang members and to enter them into the CalGang database, which targets members and associates of criminal street gangs. There are severe and long-lasting ramifications for students whose names appear on the database, including being subject to gang enhancements (increased sentence) if ever arrested in the future.
- ◆ Prohibit school officials from forwarding to police the names of students suspected of wearing “gang-related clothing” or participating in “gang-related conduct.”
- ◆ Prohibit school officials and law enforcement personnel from photographing students on the basis of suspected gang affiliation or gang-related clothing or conduct.

Police Presence and Law Enforcement Intervention

School discipline and classroom management should be under the exclusive control of school administrators and educators, yet police presence and law enforcement intervention have become commonplace in California public schools. Although often intended to create positive relationships with law enforcement, the presence of uniformed officers on campus — commonly referred to as School Resource Officers or SROs — creates an intimidating atmosphere for many students and is consistent with an increase in the criminalization of adolescent behavior. Accordingly, police should not be assigned to school campuses and should only be called in to intervene in emergency situations.

Despite the detrimental effects of SROs on campus, many school districts and their administrators feel the need to have SROs assigned to their campus or regularly call the police in order to ensure the safety of students and school personnel. School safety is essential to the effective operation of a school, but the education of youth is paramount. Accordingly, alternatives to policing that promote school discipline as education, rather than criminalization, should be implemented as a means to ensure school safety, teach appropriate behavior, and achieve the primary goal of educating and graduating students.

“Through ...[law enforcement] eyes a food fight can turn into a chaotic and violent situation that must be suppressed and controlled immediately. Through ...[an educator’s], it may be a developmentally typical, albeit annoying, behavior that offers an opportunity to teach teenagers valuable lessons about settling differences peacefully, controlling impulses, and cleaning up their own mess.”

—Johanna Wald and Lisa Thurau, *Taking School Safety Too Far?: The Ill-Defined Role Police Play in Schools.*⁵⁰

→ Policy Recommendations: Police Presence

- ◆ Establish clear school procedures for when police will be called to a school campus. Limit such calls to instances mandated by federal or California law; instances of criminal activity; and instances where there is an immediate threat to student, teacher, or public safety.
- ◆ Limit law enforcement contact with students during school hours or on school property to those matters that are related to school. Law enforcement should not be conducting police work on school property except in an emergency situation that poses a threat to safety.
- ◆ Require school officials to contact a student's parent prior to the student being questioned by police, or permit the student an opportunity to contact a parent or trusted adult before such questioning occurs.
- ◆ Prohibit SROs from enforcing school rules and from becoming involved in responding to non-criminal discipline code violations (e.g., dress code violations). Prohibit instances of suspected school rule violations from being handled as violations of the law. SROs observing suspected rule violations should report such incidents to the school principal or other appropriate school personnel so that school officials can address the situation.
- ◆ Prohibit SROs from providing "counseling" or creating trust relationships with students who are seeking help or assistance, but who are then subject to law enforcement intervention or arrest. For example, SROs should not engage students in discussions about students' weekend activities and then cite or arrest a student for admitting to underage drinking.

Legal Requirements Regarding Police Presence: The California Education Code

- ◆ A principal is required to call the police under certain circumstances, including, but not limited to, when a student possess or sells a firearm, assaults another person with a deadly weapon; or possess or sells a controlled substance. [section 48902]
- ◆ A principal or school officials who release a minor student to a law enforcement officer for the purposes of removing the minor from school premises are required to take immediate steps to notify the parent or guardian of the minor regarding the release and the place to which the minor has been taken, except when the minor has been taken into custody as a victim of suspected child abuse. [section 48906]
- ◆ According to the U.S. Supreme Court, SROs may search students pursuant to reasonable suspicion, i.e. "reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school."⁵¹ Such searches must be "reasonably related to the objectives of the search and not excessively intrusive in the light of the age and sex of the student and the nature of the infraction."⁵²

- ◆ Prohibit SROs from being involved in administrative (i.e. school-related) searches of students, unless requested by the school principal for the purpose of providing security or protection, or for handling contraband. Further prohibit SROs from requesting (and being granted requests) that an administrative search be conducted for law enforcement purposes or that an administrator act as an SRO's agent. Administrative searches should be conducted under the direction and control of school officials.
- ◆ School principals should meet with any SROs or law enforcement officials assigned to their campus on a monthly basis to discuss the types of behavior being addressed, the appropriate manner for addressing the behavior, and positive proactive or preventive measures that can be implemented.
- ◆ Provide regular training for police and SROs on adolescent behavior, students' rights, and school policies, including anti-discrimination policies.
- ◆ Adopt a governance document that firmly establishes the roles and responsibilities of law enforcement or SROs while on campus, addressing the following issues:
 - ◆ Employment relationship created by the District or school with the SROs;
 - ◆ Primary role of SROs within schools;
 - ◆ Scope of the SROs' work and authority;
 - ◆ Requirement the SROs comply with all school rules regarding non-discrimination;
 - ◆ Requirements for attending trainings related to school policy and adolescent behavior;
 - ◆ Regular meetings between the SRO and the principal; and
 - ◆ Reporting requirements.

For additional guidance and model language, see *Policing in Schools: Developing a Governance Document for School Resource Officers in K-12 Schools*, http://www.aclu.org/pdfs/racialjustice/whitepaper_policinginschools.pdf.

II. IMPLEMENTING AN EFFECTIVE SCHOOL DISCIPLINE POLICY AND MEASURING SUCCESS

School discipline can do more than simply punish bad behavior; it can foster good behavior and hold students accountable for their misbehavior. Accordingly, when it comes to school discipline, implementation is just as important as actual policy. Thoughtful and clearly articulated policies need an implementation process that involves input from members of the school community, including parents and guardians who can reinforce these values at home; a focus on prevention; and professional development for school administrators, staff, and teachers. Moreover, discipline policy and its implementation must be regularly monitored and data must be collected to analyze effectiveness and measure the success of any policies or programs implemented. Each of these components of implementation and measurement is discussed in this section.

Engage the School Community

In order to be effective, a school discipline policy should be the result of collaboration among students, parents, teachers, administrators, and school staff (including cafeteria workers, janitors, security personnel, counselors, coaches, secretaries, and librarians). When key stakeholders are excluded, there can be tension between those responsible for implementing school policies and those subject to them.

It is crucial to develop a set of well-known and widely understood principles, core values, and norms with respect to discipline and conduct that everyone in the school community agrees to uphold. In fact, the California Department of Education recommends all school districts and schools develop a comprehensive plan that includes a statement of principles and involves parents and teachers in its development.⁵⁴ Engaging members of the school community in the creation and assessment of these core principles not only invests them in its success but also fosters a sense of accountability.

“Student voice and participation in the school community is a fundamental part of holistic education and is essential both for improving school climate and the quality of education, and for contributing to the development of young people as active participants in society.”

—Sullivan and Keeney, *Teachers Talk: School Culture, Safety and Human Rights*.⁵³

→ Policy Recommendations: Engaging the School Community

- ◆ Offer community members — students, parents, teachers, school staff, and administrators — the chance to provide input on determining the goals, scope, and substance of school discipline policies and defining acceptable and appropriate behavior in the Code of Conduct.
 - ◆ Convene a representative group of 10-15 school administrators, teachers, school staff, parents, and students, with at least 2 from each group, in advance of each new school year to review school discipline policy and update it as necessary to ensure school safety, fairness, and that all students have an opportunity to learn. Participants should be selected to represent the racial/ethnic, gender, and socioeconomic diversity of the school.
- ◆ Create and adopt a Code of Conduct that reflects the school community's values as to appropriate behavior. Such values might include respect, responsibility, acceptance/tolerance, safety, honesty, and commitment to education.
- ◆ Create and adopt a collective statement of guiding principles to govern school discipline. These guiding principles should provide a framework for the use of discipline in school that reflects the community's values and can be used to measure the appropriateness of any disciplinary action being considered. Such a framework might include the following principles:
 - ◆ *Students have a right to remain in school.* Exclusionary discipline — removing a student from a classroom or from school — should be used in limited, specific circumstances in order to minimize the impact on a student's opportunity to learn. There should not be academic penalties during the period of time a student is suspended or expelled and a student should be able to complete her coursework.
 - ◆ *Students have a right to due process.* Students have a right to a fair and equitable process in response to a disciplinary matter that permits them notice of the allegations against them and an opportunity to be heard and to tell their story.
 - ◆ *Criminalization of youth should be avoided in school discipline.* Except in specific situations or incidents of actual or threatened violence or real safety concerns, student conduct should not be criminalized on school campuses.
 - ◆ *Law enforcement should be utilized only when necessary to ensure safety.* Law enforcement personnel should not be employed to address non-criminal adolescent behavior.
- ◆ Create and distribute a Student Handbook that explains the school's values, Code of Conduct, and discipline policy, and that includes information on such topics as students' rights and responsibilities, prohibited behavior, and procedures for due process and appeals.⁵⁵
- ◆ Provide clear and fair notice to students and parents in the Student Handbook or Code of Conduct about what is considered appropriate behavior or conduct at school so that students can conform their conduct to the standards expected of them. Such information will also give parents the information needed to reinforce the standard of conduct at home to increase student accountability.
- ◆ Proactively teach students — of all grade levels — what acceptable behavior looks like.
 - ◆ Develop brief lesson plans for teachers and administrators to be used in classrooms and assemblies and allow teachers flexibility in the school day to teach appropriate classroom behavior.
- ◆ Provide mentoring on classroom management for new teachers by assigning each incoming teacher an experienced teacher mentor who successfully and appropriately manages her classroom without excessive discipline referrals.
- ◆ Provide a forum for feedback whereby members of the school community can report improper use of discipline or failure to comply with the discipline policy or code of conduct and that can allow students, parents, teachers, and school staff and administrators to respond to provisions of the discipline policy that they feel are working or that are failing to meet the goals of the school.

Focus on Prevention

School discipline is often employed in reaction to misbehavior rather than being an opportunity to teach appropriate and positive behavior. Beyond simply explaining the consequences of misbehavior, a good discipline policy should set forth appropriate behavior and promote expectations of acceptable behavior. For example, a policy can establish the expectation that all members of the school community will treat one another with respect, or it can provide guidance on how to mediate conflict among peers. When a discipline policy provides clarity and guidance while focusing on prevention, it can effectively minimize many disruptive incidents and foster a positive environment that uses discipline only when necessary to achieve that goal.

→ Policy Recommendations: Focusing on Prevention

A policy focused on prevention will include some of the following components⁵⁶:

- ◆ Clear statements of what is expected of students and what students should expect from peers, teachers, and school staff and administrators.
- ◆ Emphasis on preventive measures throughout school and within the disciplinary code such as peer mediation, conflict resolution, and improved classroom management designed to prevent conflict and teach appropriate behavior.
- ◆ Rules and policies that are well publicized, consistently enforced, nondiscriminatory, and that take into consideration the due process all students are entitled to receive. Students' due process rights include notice and an opportunity to be heard. (*See Due Process, page 13.*)
- ◆ Strategies for recognizing early signs of behavior that may result in conflict between students or undermine teaching, and ways to implement appropriate early interventions.
- ◆ Programs and strategies that develop a student's sense of connection to school and emphasize a student's ability to resolve conflict in a positive and constructive way. (*See Successful Alternatives to Traditional School Discipline, page 3.*)
- ◆ Ways to maintain open lines of communication among all members of the school community through events and meetings outside of the classroom.

Professional Development

School principals set the tone for the school environment and are responsible for engaging their school community in setting expectations of conduct and respect for one another within the school. Teachers and school staff regularly and consistently interact with students and are responsible for modeling those expectations. Thus, an essential element to preventing and addressing student misconduct and ensuring a positive school environment is providing teachers and school staff and administrators with relevant professional development opportunities that focus on creating a positive school culture and the consistent, effective, and fair implementation of school discipline policies. Moreover, school personnel should be trained to incorporate the philosophies of creating a positive school environment and implementing non-biased discipline into the daily operation of their school, including utilizing curriculum that incorporates the values of diversity, anti-bias, and cultural awareness and competency.

CULTURALLY RESPONSIVE TEACHING

Culturally Responsive Teaching recognizes the importance of understanding and including student’s cultural references in all aspects of learning and has the potential to minimize miscommunication between teachers and students that often underlies discipline issues.

- **Diversity and Discipline:** Nationwide, students of color often receive a disproportionate amount of disciplinary action. Teachers who receive cultural competency training are better equipped to distinguish cultural miscommunications from discipline issues.
- **Professional Development:** There are a variety of professional development options available—from diversity consultants to free Web sites. Some materials explain big-picture, systemic problems, while others focus on an educator’s implicit biases. The best programs are tailored to meet a specific school’s needs.
- **Implementation is Key:** Teachers can implement culturally competent practices in their classrooms, or a diversity leader or taskforce can spearhead an effort to incorporate diverse curricula schoolwide.

The Southern Poverty Law Center’s Teaching Tolerance Web site and free newsletter offer several useful tools, such as lesson plans, articles, and professional development opportunities at <http://www.tolerance.org/>.

→ Policy Recommendations: Professional Development

- ◆ Provide an annual review of the school discipline policies for teachers and school staff, especially those policies that set specific limitations on the use of exclusionary discipline (the removal of a student from a classroom or school) and punishment of certain offenses (such as “willful defiance” and “gang-related activity”). Such a review should include a discussion of the legal limitations and requirements relevant to school discipline. (*See A Common-Sense Approach to Zero Tolerance*, page 9, and *Responding Appropriately to Common Student Misbehaviors*, page 14.)
- ◆ Incorporate positive interventions and appropriate classroom management techniques into the daily operation of the school so that expectations are set and are part of the regular functioning of the school. (*See Successful Alternatives to Traditional School Discipline*, page 3, and Appendix E: Organizations Providing Resources for Positive School Environments, page 31.)
- ◆ Provide annual professional development opportunities for teachers and school staff on topics such as inclusive school environments, anti-bias, cultural awareness and competency, conflict resolution, proper classroom management, and appropriate implementation of school discipline.
- ◆ Enable school administrators and/or teachers to participate in “Train the Trainer” programs whereby they receive training on relevant topics (inclusive school environments, anti-bias, conflict resolution, etc.) and on how to train others in the subject matter. Such programs create a sense of ownership, investment, and accountability for the trainers.

Data Collection and Monitoring

Monitoring the implementation and impact of school disciplinary policies and practices allows school officials to determine successful strategies for addressing and correcting underlying student misbehavior. Regular data collection and assessment also provide an opportunity to eliminate disciplinary practices that do not effectively address behavior problems and to ascertain whether inconsistencies or disparities in implementation are occurring. Any discipline practice or policy adopted by a school should be regularly evaluated to ensure it effectively reduces behavioral problems and teaches students more appropriate, acceptable behavior.

Data collection and analysis to help track the effectiveness of school discipline policies should be comprehensive in nature. In particular, it is important to collect and analyze data on the types of misconduct that are undermining learning, the various responses of teachers and administrators to such conduct, the existence of any disparities in outcomes for similar offenses, and the rate of success for various interventions.⁵⁷ Any school data collection and assessment policy should protect students’ privacy, avoid alienating students and teachers, and help schools assess and revise their policies to ensure that they are leading to desired outcomes.

Although California schools are required to collect and report various discipline-related data to the state, California does not require collecting the comprehensive data necessary to effectively assess the effectiveness and fairness of school discipline policies. Accordingly, it is essential that schools collect comprehensive discipline data beyond what is required by state law in order to assess their policies and practices effectively.

→ Policy Recommendations: Data Collection and Analysis

- ◆ Protect personal privacy— of students and school staff —as a key part of a data collection and analysis policy. During data collection, the names of individuals should be removed and replaced with individual numbers or codes in order to protect student and staff identities while still showing whether an individual is repeatedly referred to in the discipline records and allowing analysis of sensitive demographic data.
- ◆ Data collected should include at least the following information:
 - ◆ Demographics: the student’s race/ethnicity, gender, disability, language status (whether the student is English proficient or an English Learner), and other demographic information necessary to address inconsistencies in discipline policies and their implementation;
 - ◆ Offense/reason for discipline referral;
 - ◆ Referring staff member and her race/ethnicity;
 - ◆ Resulting consequences imposed by staff member, including but not limited to, any alternatives to suspension imposed, suspension (and what type: in-school or home suspension), disciplinary transfer, recommendation for expulsion, or expulsion; and
 - ◆ The administrator imposing discipline and her race/ethnicity.
- ◆ Quarterly reports based on the data collection and assessment should be made to the school board for regular public discussion and consideration.
- ◆ Create a discipline review committee that analyzes the data to determine whether discipline disparities exist on the basis of race/ethnicity, gender, disability, or language status.
- ◆ Develop processes for continually examining the characteristics of the school environment and the school responses to student behavior that may influence or perpetuate student misconduct, then modify those characteristics or responses to help bring about appropriate student conduct.⁵⁸
- ◆ Utilize the school’s statement of principles regarding discipline in order to assess the effectiveness of the strategies being used in helping the school meet its larger goals.⁵⁹
- ◆ In response to data analysis determine if goals are needed for reducing the use of exclusionary disciplinary mechanisms and any racial disparities and set such goals.⁶⁰

III. CONCLUSION

School discipline is necessary for the creation of a safe and welcome school environment that is the foundation of successful schools and effective learning. A discipline policy that is written and implemented in a way that emphasizes intervention, prevention, and teaching appropriate behavior provides an opportunity for the entire school community to collaborate and support one another in ensuring a safe and welcoming school and to hold each other accountable — without simply excluding students — for behavior that may undermine that goal. California public schools must continue to adopt and implement school discipline policies and practices in a thoughtful manner that retains, educates, and graduates the majority — if not all — of California’s public school students.

ENDNOTES

- 1 Southern Poverty Law Center, *Effective Discipline for Student Success: Reducing Student and Teacher Dropout Rates in Alabama*, (n.d.), 10-11. http://www.splcenter.org/sites/default/files/downloads/Effective_Discipline_ALA.pdf.
- 2 See California Constitution article IX, sections 1, 5.
- 3 American Psychological Association Zero Tolerance Task Force, *Are Zero Tolerance Policies Effective in the Schools?: An Evidentiary Review and Recommendations*. *The American Psychologist*, 63(9), 858 (2008).
- 4 *Ibid.* at 854.
- 5 California Department of Education, *State Schools Chief Jack O'Connell Releases Annual Report on Dropouts and Graduates Using Individual Student Level Data*, News Release, May 12, 2009, <http://www.cde.ca.gov/nr/ne/yr09/yr09rel073.asp>.
- 6 All statutory references are to the California Education Code unless otherwise stated.
- 7 Russell K. Heck et al., *California Healthy Kids Survey Factsheet #4: Bias-related Harassment among California Students*, 1 (2005), <http://www.wested.org/chks/pdf/factsheet4.pdf> (finding that during the 2001-02 school year, 75% of the harassment reported by California middle and high school students surveyed was bias-related harassment).
- 8 California Education Code, section 201(a), (b).
- 9 California Education Code, section 201(f).
- 10 California Penal Code, section 422.56(c).
- 11 California Education Code, section 230.
- 12 California Education Code, section 212.5.
- 13 California Education Code, section 220 (incorporating by reference California Penal Code, section 422.55, which in turn incorporates by reference California Penal Code, section 422.6).
- 14 For more information about federal protections for students with disabilities, see the Individuals with Disabilities Education Act, Title 20 of the United States Code, sections 1400 and following, and section 504 of the Rehabilitation Act of 1973, Title 29 of the United States Code, section 794. Title II of the ADA prohibits discrimination based on disability by any public entity, including public schools, colleges, and universities. Section 504 of the Rehabilitation Act prohibits discrimination based on disability by recipients of federal financial assistance, while the Individuals with Disabilities Education Act (IDEA) entitles students with disabilities to a free appropriate public education.
- 15 California Education Code, section 220; section 422.55 of the California Penal Code defines hate crimes as those crimes motivated by the perpetrator's perception of a characteristic of the victim, including their 1) disability, 2) gender, 3) nationality, 4) race or ethnicity, 5) religion, 6) sexual orientation, 7) association with a person or group with one or more of these actual or perceived characteristics.
- 16 California Department of Education, *Improving Collaboration on School Safety Issues*, Dec. 9, 2009, <http://www.cde.ca.gov/LS/ss/vp/sscollab.asp>.
- 17 California Department of Education, *Taking Center Stage – Act II (TCSII): Bullying Prevention*. <http://pubs.cde.ca.gov/tcsii/ch8/bullyingprevent.aspx>.
- 18 California Department of Education, Sample Policy for Bullying Prevention. Oct. 20, 2009, <http://www.cde.ca.gov/ls/ss/se/samplepolicy.asp>.
- 19 California Department of Education, *Taking Center Stage – Act II (TCSII): Bullying Prevention*. See note #17.
- 20 American Psychological Association Zero Tolerance Task Force. See note #3, at 858.
- 21 The impetus for many zero tolerance policies is the Gun-Free School Act (GFSA), enacted in 1994. The GFSA requires schools receiving federal education funds to expel any student who brings a firearm to campus. The California Education Code section 48915(c) was amended to comply with Federal Law and added other offenses subject to mandatory immediate suspension and recommendation for expulsion.
- 22 California Department of Education, *Zero Tolerance*. Dec. 7, 2009, <http://www.cde.ca.gov/ls/ss/se/zerotolerance.asp>; California State PTA, *Alternatives to Zero Tolerance*, 2009, <http://www.capta.org/sections/programs/cc-zero-tolerance.cfm>.
- 23 “Controlled substance” as defined in the California Health and Safety Code, division 10, chapter 2 (commencing with section 11053).
- 24 “Sexual assault” and “sexual battery” as defined in the California Education Code, section 48900(n).
- 25 California Department of Education, *Zero Tolerance*. See note #22 (citing Advancement Project and The Civil Rights Project at Harvard University, *Opportunities Suspended: The Devastating Consequences of Zero-Tolerance and School Discipline Policies*, (2000), <http://advancementproject.org/sites/default/files/publications/opsusp.pdf>).
- 26 Russell Skiba and Jeffery Sprague, *Safety Without Suspensions*. *Educational Leadership*, 66(1), 42 (2008), http://www.cde.state.co.us/pbs/download/pdf/SafetyWithoutSuspensions_SkibaSprague.pdf.
- 27 California Department of Education, *Zero Tolerance*. See note #22 (citing Advancement Project and The Civil Rights Project at Harvard University, *Opportunities Suspended: The Devastating Consequences of Zero-Tolerance and School Discipline Policies*, (2000), <http://advancementproject.org/sites/default/files/publications/opsusp.pdf>).
- 28 Russell J. Skiba and M. Karega Rausch, *Zero Tolerance, Suspension, and Expulsion: Questions of Equity and Effectiveness, in Handbook of Classroom Management: Research, Practice, and Contemporary Issues* (Carolyn M. Evertson and Carol S. Weinstein, eds.), 1077 (2006).
- 29 American Psychological Association Zero Tolerance Task Force. See note #3, at 853-856.
- 30 Title 20 of the United States Code, section 1415(k); Title 34 of the Code of Federal Regulations, sections 300.530-300.537.

- 31 California Education Code, section 48900.5.
- 32 California Department of Education, *Zero Tolerance*. See note #22 (citing Advancement Project and The Civil Rights Project at Harvard University, *Opportunities Suspended: The Devastating Consequences of Zero-Tolerance and School Discipline Policies*, (2000), <http://advancementproject.org/sites/default/files/publications/opsusp.pdf>).
- 33 Advancement Project, *Key Components of a Model Discipline Policy*, 6-7. <http://www.stopschoolstojails.org/sites/default/files/model%20discipline%20policies%20-%206.15.09.pdf>.
- 34 California Education Code, section 48915.5.
- 35 Southern Poverty Law Center, *Effective Discipline for Student Success*. See note #1.
- 36 American Psychological Association Zero Tolerance Task Force. See note #3, at 854.
- 37 California Education Code, section 48900(w).
- 38 California Department of Education, *Student Success Teams: A Blueprint for Building Student and School-wide Progress*. Nov. 5, 2009. <http://www.cde.ca.gov/ls/ai/dp/sb65sst.asp>.
- 39 California Department of Education, *School Attendance Improvement Strategies*. Feb. 11, 2009. <http://www.cde.ca.gov/ls/ai/cw/attendstrategy.asp>.
- 40 California Education Code, section 48900(k).
- 41 California Education Code, section 48900(i).
- 42 UCLA Institute for Democracy, Education, and Access, *Suspension and Expulsion at a Glance*, 2 (2006). <http://idea.gseis.ucla.edu/publications/files/suspension.pdf>.
- 43 American Psychological Association Zero Tolerance Task Force. See note #3, at 858.
- 44 Russell Skiba et al., *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment*, (2000), 13, http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/1a/61/f6.pdf.
- 45 Letter from Nancy L. Talner, Staff Attorney, American Civil Liberties Union of Washington, to Dr. June Rimmer, Chief Academic Officer, Seattle School District, *Improvements in Use of Disobedience Rule* (March 24, 2003) (on file with the American Civil Liberties Union)(noting that the number of notices for “disobedience” dropped from 534 to 62 in two school years).
- 46 *Ibid.*
- 47 *Stephenson v. Davenport Community School District*, 8th Circuit Court, 1997; *Federal Reporter, Third Series*, Volume 110, p. 1310 (quoting Robert K. Jackson and Wesley D. McBride, *Understanding Street Gangs*, 76-77 (1992)).
- 48 For more information about the legal foundation for this issue, see *City of Chicago v. Morales*, Supreme Court of the United States, 1999; *United States Reports*, Volume 527, p. 56 (quoting *Giaccio v. Pennsylvania*, Supreme Court of the United States, 1966; *United States Reports*, Volume 382, p. 402-403).
- 49 See, e.g., *Stephenson v. Davenport Community School District*, See note 47, at p. 1311 (“[A] central purpose of the vagueness doctrine [is] that ‘if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them.’” [quoting *Grayned v. City of Rockford*, Supreme Court of the United States, 1972; *United States Reports*, Volume 408, p. 108]).
- 50 Johanna Wald and Lisa Thureau, *Taking School Safety Too Far?: The Ill-Defined Role Police Play in Schools*, *EducationWeek*, http://www.edweek.org/ew/articles/2010/02/24/22wald.h29.html?tkn=UMPFYKxBS5qhfDNuWUX98T7cQIGVJQifEw6K&cm_p=clp-edweek.
- 51 *In re William V.*, Court of Appeal of California’s First Appellate District, 2003; *California Appellate Reports*, Volume 111, p. 1469 (quoting *New Jersey v. TLO*, Supreme Court of the United States, 1985; *United States Reports*, Volume 469, p. 342).
- 52 *Ibid.*
- 53 Elizabeth Sullivan and Elizabeth Keeney, *Teachers Talk: School Culture, Safety and Human Rights*, 12 (2008), http://www.nesri.org/Teachers_Talk.pdf.
- 54 California State Board of Education, *Policy # 01-02: School Safety, Discipline, and Attendance*, March 2001. <http://www.cde.ca.gov/be/ms/po/documents/policy01-02-mar2001.pdf>.
- 55 *Ibid.*
- 56 Further resources for the recommendations in this section include the following: Advancement Project, *Education on Lockdown: The Schoolhouse to Jailhouse Track*, (2005), <http://www.advancementproject.org/reports/FINALEOLrep.pdf>; California Department of Education, *Improving Collaboration on School Safety Issues*. See note #16; California State Board of Education. See note #54; Dawn Marie Barhyte, *Ain’t Misbehaving: Use Positive Discipline to Discipline Kids*, EduGuide, <http://www.eduguide.org/Students-Library/Discipline-Kids-Positive-Discipline-1654.aspx>; Johanna Wald and Daniel J. Losen, eds., *Deconstructing the School-to-Prison Pipeline*. New Directions for Youth Development, 99, (2003); Miguel Socias et al., California Dropout Research Project. *California High Schools That Beat the Odds in High School Graduation*, 19 (2007), http://cdrp.ucsb.edu/dropouts/pubs_reports.htm; Russell Skiba et al., *Preventing School Violence: A Practical Guide to Comprehensive Planning*, (2000), <http://www.indiana.edu/~safeschl/psv.pdf>.
- 57 Advancement Project. See note #5, at 46; American Psychological Association Zero Tolerance Task Force. See note #3, at 858; Rebecca Gordon et al., *Facing the Consequences: An Examination of Racial Discrimination in U.S. Public Schools*, 14 (2000), http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/17/22/06.pdf.
- 58 California State Board of Education. See note #54.
- 59 *Ibid.*
- 60 Advancement Project. See note #5, at 46; Rebecca Gordon et al. See note #57, at 14.

APPENDIX A: Expulsion Flow Chart

Mandatory Expulsion

California Education Code, section 48915(c), (d)

If the Superintendent or Principal determines that the student committed one of the following acts at school or at a school activity off school grounds:

- 1) Possessing, selling, or furnishing a firearm.
- 2) Brandishing a knife at another person.
- 3) Selling a controlled substance.
- 4) Committing or attempting to commit sexual assault or committing sexual battery.
- 5) Possession of an explosive.

California Education Code, section 48915(c).

Immediately suspend student and recommend her for expulsion.

EXPULSION ORDER:

The governing board shall order a student expelled upon a finding that the student committed an act listed in California Education Code, section 48915(c).

California Education Code, section 48915(d).

Case-by-Case Expulsion

California Education Code, section 48915(a), (b)

If the Superintendent or Principal determines that the student committed one of the following acts at school or at a school activity off school grounds:

- 1) Causing serious physical injury, *except in self-defense*.
- 2) Possession of a knife, explosive, or other dangerous object.
- 3) Possession and/or use of a controlled substance.
- 4) Robbery or extortion.
- 5) Assault or battery on a school employee.

California Education Code, section 48915(a).

FIRST ANALYSIS:

Is recommendation for expulsion inappropriate due to a particular circumstance?

**IF FOUND INAPPROPRIATE:
Alternative Discipline**

**IF FOUND APPROPRIATE:
Recommend Expulsion**

SECOND ANALYSIS:

Upon recommendation of expulsion, the governing board may order a student expelled upon a finding that the student committed an act in California Education Code, section 48915 (a), and one or both of the following are true:

- 1) Other means of correction are not feasible or have repeatedly failed to bring about proper conduct.
- 2) Due to the nature of the act, the presence of the pupil causes continuing danger.

California Education Code, section 48915(b).

**IF NOT FOUND TRUE:
No Expulsion Order**

**IF ONE OR BOTH FOUND TRUE:
Expulsion Order**

EXPULSION ORDER AND REFERRAL:

The governing board shall order a student expelled pursuant to California Education Code, section 48915(b) or (c), and shall refer that pupil to a program of study that meets *all* of the following conditions:

- (1) Is appropriately prepared to accommodate students who exhibit discipline problems.
- (2) Is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school.
- (3) Is not housed at the schoolsite attended by the student at the time of suspension.

California Education Code, section 48915(d), (f).

Expulsion Under Particular Circumstances

California Education Code, sections 48900(a)-(m):

A Superintendent or Principal **may recommend expulsion** if she determines that the student committed one of the following acts (related to school activity or attendance, pursuant to 48900(s)):

- 1) Caused, attempted, or threatened physical injury, **except in self-defense** [48900(a)];
- 2) Possessed, used, or sold dangerous objects [48900(b)];
- 3) Possessed, used, or sold drugs or alcohol [48900(c)];
- 4) Offered, arranged, or negotiated to sell drugs or alcohol [48900(d)]; or
- 5) Committed or attempted to commit robbery or extortion [48900(e)].

- 1) Caused or attempted to damage school or private property [48900(f)];
- 2) Stole or attempted to steal school or private property [48900(g)];
- 3) Possessed or used tobacco, or products containing tobacco or nicotine products [48900(h)];
- 4) Committed an obscene act or engaged in habitual profanity [48900(i)];
- 5) Unlawfully possessed, offered, arranged or negotiated to sell drug paraphernalia [48900(j)];
- 6) Disrupted school activities or otherwise willfully defied valid authority [48900(k)];
- 7) Knowingly received stolen school or private property [48900(l)]; or
- 8) Possessed an imitation firearm [48900(m)].

ANALYSIS

Upon recommendation, the governing board may order a student expelled upon a finding that the student committed one of the acts in California Education Code, sections 48900(a)-(e), and either of the following are true:

- 1) Other means of correction are not feasible or have repeatedly failed to bring about proper conduct.
- 2) Due to nature of the **act**, the presence of pupil causes continuing danger.

California Education Code, section 48915(b).

ANALYSIS

Upon recommendation, the governing board may order a student expelled upon a finding that the student committed one of the acts in California Education Code, sections 48900(f)-(m), and either of the following are true:

- 1) Other means of correction are not feasible or have repeatedly failed to bring about proper conduct.
- 2) Due to nature of the **violation**, the presence of pupil causes continuing danger.

California Education Code, section 48915(e).

IF ONE OR BOTH FOUND TRUE:
Expulsion Order

IF NOT FOUND TRUE:
No Expulsion Order

IF ONE OR BOTH FOUND TRUE:
Expulsion Order

DECISION TO EXPEL:

The governing board shall order a student expelled pursuant to California Education Code, section 48915(b), and shall refer that pupil to a program of study that meets **all** of the following conditions:

- (1) Is appropriately prepared to accommodate students who exhibit discipline problems.
- (2) Is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school.
- (3) Is not housed at the schoolsite attended by the student at the time of suspension.

California Education Code, section 48915(f), incorporating by reference California Education Code, section 48915(d).

DECISION TO EXPEL:

The governing board shall refer a student who has been expelled pursuant to California Education Code, section 48915(e) to a program of study which meets the following conditions:

- (1) Is appropriately prepared to accommodate students who exhibit discipline problems.
- (2) Is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school; **unless the county superintendent of schools certifies that an alternative program of study is not available at a site away from a comprehensive middle, junior, or senior high school or an elementary school.**
- (3) Is not housed at the schoolsite attended by the student at the time of suspension.

California Education Code, section 48915(f), incorporating by reference California Education Code, section 48915(d).

APPENDIX B:

Discretionary Suspension Flow Chart

If the Superintendent or Principal determines that the student committed one of the following acts (related to school activity or attendance, pursuant to 48900(s)) as a **first offense**:

- 1) Caused, attempted, or threatened physical injury, **except in self-defense** [48900(a)];
- 2) Possessed, used, or sold dangerous objects [48900(b)];
- 3) Possessed, used, or sold drugs or alcohol [48900(c)];
- 4) Offered, arranged, or negotiated to sell drugs or alcohol [48900(d)]; or
- 5) Committed or attempted to commit robbery or extortion [48900(e)].

- 1) All other offenses listed under California Education Code, Section 48900, specifically subsections (f)-(r).
- 2) Sexual harassment, but does not apply to students enrolled in K-3 [48900.2];
- 3) Hate violence [48900.3];
- 4) Harassment, threats, or intimidation [48900.4]; or
- 5) Terroristic threats [48900.7].

FIRST ANALYSIS:
Does the student's presence cause a danger to persons or property or threaten to disrupt the instructional process?

California Education Code, section 48900.5.

ALTERNATIVE DISCIPLINE:
Suspension shall be imposed only when other means of correction fail to bring about proper conduct.

California Education Code, section 48900.5.

IF FOUND TRUE:
May suspend even on a first offense.

IF FOUND UNTRUE:
Other means of correction must be imposed, i.e. alternative discipline

DISCRETION TO USE ALTERNATIVE DISCIPLINE:
A superintendent of the school district or the principal may use her discretion to provide alternatives to suspension or expulsion, including, **but not limited to**, counseling and anger management program.

California Education Code, section 48900(v).

APPENDIX C:

Ideal Discretionary Discipline Flow Chart

DISCRETIONARY SUSPENSION FIRST OFFENSE:
See opposite page



**SUBSEQUENT OFFENSES OF THE
SAME CONDUCT**



For the second, third, fourth and fifth offenses, progressive alternative discipline that relates to the specific misconduct should be imposed.

For example, repeated violations for tobacco use should result in alternatives to suspension for at least the first and second violation. For three or more violations, progressive suspension should be used starting with only a one-day suspension – ideally in-school or after school suspension – for the same type of violation.

In order to give notice and teach appropriate behavior, progressive discipline should be used for the same type of misconduct so the student understands the ramifications of her actions. In other words, a student who repeatedly uses tobacco should be subject to progressive discipline for that behavior. If she subsequently talks back to a teacher, she should be subject to separate progressive discipline because the misconduct is different.

EXAMPLES OF ALTERNATIVE DISCIPLINE:

- Meeting with student and parents
- Reflective activities, e.g. writing essay about misbehavior
- Mediation
- Counseling
- Anger Management
- Health Counseling or Intervention
- Mental Health Counseling
- Social-emotional Cognitive Skill Building
- Community Service
- In-school Detention or Suspension, during lunchtime, afterschool, or on weekends

APPENDIX D:

Useful Articles and Reports

Advancement Project, Education on Lockdown: The Schoolhouse to Jailhouse Track (2005), <http://www.advancementproject.org/sites/default/files/publications/FINALEOLrep.pdf>

For more information about the Advancement Project, visit www.stopschoolstojails.org.

California Department of Education, Improving Collaboration on School Safety Issues (Dec. 9, 2009), <http://www.cde.ca.gov/LS/ss/vp/sscollab.asp>.

For more information from the CDE on school safety, visit <http://www.cde.ca.gov/ls/ss/se/>.

Dignity in Schools. Dignity in Schools Campaign National Resolution for Ending School Pushout. http://www.dignityinschools.org/files/DSC_National_Resolution.pdf.

For more information about Dignity in Schools, visit www.dignityinschools.org.

Glen Dunlap et al., School-wide Positive Behavior Support: Implementers' Blueprint and Self-Assessment (2004), http://www.pbis.org/pbis_resource_detail_page.aspx?Type=3&PBIS_ResourceID=216.

For more information about school-wide Positive Behavior Interventions and Supports, visit <http://pbis.org>.

Susan Sandler et al., Turning To Each Other Not On Each Other: How School Communities Prevent Racial Bias in School Discipline (2000), http://www.justicematters.org/jmi_sec/jmi_downlds/turning.pdf.

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American Psychological Association Zero Tolerance Task Force, Are Zero Tolerance Policies Effective in the Schools?: An Evidentiary Review and Recommendations. *The American Psychologist*, 63(9) (2008).

Russell Skiba et al., The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment, (2000), http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/1a/61/f6.pdf.

Russell Skiba et al., Preventing School Violence: A Practical Guide to Comprehensive Planning, (2000), <http://www.indiana.edu/~safeschl/psv.pdf>.

For more information about Russell Skiba's research, visit <http://www.indiana.edu/~safeschl/>.

Ted Wachtel, Safer Saner Schools: Restoring Community in a Disconnected World, (1999), <http://www.iirp.org/pdf/SSSRestoringCommunity.pdf>.

For more information about restorative justice in schools, visit <http://www.safersanerschools.org/>.

APPENDIX E:

Organizations Providing Resources for Positive School Environments

Anti-Defamation League: A World of Difference Institute: Trainings and resources on anti-bias education. http://www.adl.org/education/edu_awod/default.asp.

National Coalition Building Institute (NCBI): Teaches individuals how to lead efforts in their community to prevent racism and other forms of discrimination by developing programs and strategies on violence prevention, conflict resolution, and coalition building. <http://ncbi.org/>.

EdChange: Programs to meet the needs of individual schools that promote school-wide diversity and equity. <http://www.edchange.org/index.html>.

Educators for Social Responsibility: Professional development resources that help educators reform their school's policies and practices in order to improve their school's culture and climate. <http://esrnational.org/>.

The National Conference for Community and Justice: Resources on promoting cultural understanding and respect through conflict resolution and education. <http://www.nccj.org/>.

Olweus Bullying Prevention Program: A comprehensive, school-wide approach for reducing bullying in schools and improving overall school climate. <http://www.clemson.edu/olweus/>.

Southern Poverty Law Center's Teaching Tolerance: Anti-bias resources for educators, including a free magazine and classroom kits. <http://www.splcenter.org/what-we-do/teaching-tolerance>.

SCHOOLS FOR ALL CAMPAIGN: Preventing Bias and Pushout

In California and throughout the nation, youth are being subjected to bias, harassment, and discrimination in schools. The failure to address these experiences is leading to a dangerous trend: students stop engaging, misbehave, and become so alienated that they choose to leave school or are forced out.

The ACLU of Northern California's Schools for All Campaign works to ensure that all youth attend schools that are inclusive, respectful, and welcoming — schools that do not give up on students but rather strive to foster the potential of every child.

For more information:

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