

# SCHOOL DISCIPLINE



## Do I have rights if I am suspended, expelled, or placed on an involuntary transfer?

**YES.** Under the California Constitution students have the right to an education.<sup>i</sup> That means that your school cannot take your education away from you without giving you due process, or in other words, following rules that protect your rights.

Please note this handout only covers general education discipline. If you are a special education student, meaning you have an individualized education plan (IEP) or 504 Plan, you have even more legal rights.

## SUSPENSIONS

### What is a suspension?

**SUSPENSION IS** a form of school discipline which temporarily removes you from a class or from school. Your school may remove you from school grounds, a classroom, or place you in a supervised (“in-school”) suspension classroom separate from other students.

### Can my school suspend me for anything?

**NO.** Your school can only suspend you for behavior explicitly listed in the California Education Code and only for your behavior at school or related to a school activity. This includes behavior at school, during school-sponsored activities, and on your way to and from school.

A school cannot suspend you for school absences or tardiness. A school also cannot suspend students below the fourth grade (in-school or out-of-school) for “willful defiance.” Willful defiance is generally defined as disrupting school activities or otherwise willfully defying the authority of school staff. This can include for example a student refusing to take off a hat in class.

### Are there rules my school has to follow before it suspends me?

**YES.** Your school must first try other ways to change your behavior. Examples of other ways a school might use are student or parent conferences, referrals to counselors, psychologists, or anger management programs, creating study or guidance teams, or making a referral for a comprehensive assessment.<sup>ii</sup> Your school may only suspend you if those other ways don’t work, unless your behavior is violent or dangerous.

### Do I have rights during the suspension process?

**YES.** You have the right to an informal pre-suspension conference with school or district staff, unless there is an emergency situation. You also have other rights during the process, including the right to tell your side of the story and present evidence in the conference before you are suspended.

### Do I have other rights after a final decision of suspension?

**YES.** Your school must send a written notice of its decision to your parents or guardians. Your school cannot suspend you for more than five days in a row or for more than 20 total school days in one school year. You may have the right to appeal your school’s final decision, meaning someone else can review the final decision to see if it’s correct.

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## EXPULSIONS

### What is an expulsion?

**EXPULSION IS** when your school district excludes you from attending traditional schools in your district.

### Can my school expel me for anything?

**NO.** Your school can only expel you for behavior on school grounds or at a school-related activity. You cannot be expelled for “willful defiance,” or for causing serious physical injury out of self-defense.<sup>iii</sup>

Your school **MUST** expel you only for the following “zero tolerance” behaviors: (1) possessing or selling firearms; (2) threatening another person with a knife; (3) selling a controlled substance; (4) attempting or committing a sexual assault; (5) possessing an explosive; or (6) inflicting serious bodily injury. If you are expelled for one of these offenses, you may still be placed on a “suspended expulsion.” This puts the expulsion on hold, but if you commit another expellable offense, you can be expelled without a hearing.

Your school **MAY** expel you for other behavior, but only those explicitly listed in the Education Code.<sup>iv</sup> Your school must first try other ways to change your behavior. Examples of other ways a school might use are student or parent conferences, referrals to counselors, psychologists, or anger management programs, creating study or guidance teams, or making a referral for a comprehensive assessment.<sup>v</sup>

### Do I have the right to attend school while I am waiting for my expulsion hearing?

**YES.** Prior to your hearing, your district must continue to offer you an educational program. However, if you have been recommended for expulsion and your school believes you would cause a danger in school or disrupt the typical school day, your school may extend your suspension until your hearing. If your school extends your suspension, you have a right to another meeting (usually called an “extension of suspension” or “due process” meeting). Your school can suspend you until your expulsion hearing, but you should still request that your homework be sent home.

Often schools give students a “stipulated expulsion” agreement. A stipulated expulsion agreement is usually a written document where the parent waives the student’s right to a hearing and simply agrees to have the student expelled. By signing this agreement, a student is admitting that they violated the school code and will have an expulsion on their record. Such agreements are generally **NOT** in your best interest and should be looked at very carefully—consult with an attorney if you can before signing that agreement.

### Are there rules my school has to follow before it expels me?

**YES.** You have the right to an expulsion hearing within 30 school days of the proposed expulsion, but you also have the right to postpone your hearing at least once if you want to, as long as you request that in writing.<sup>vi</sup> Your school district will make its final expulsion decision after your hearing.

Your school district must also provide you written notice of your expulsion hearing date at least ten days before your hearing.<sup>vii</sup> This notice should list the date and location of the hearing, the facts and grounds for the expulsion referral, your rights, and a copy of the district’s disciplinary rules for the alleged offense. You have the right to request all of your student records and inspect any evidence the district plans to present against you before your expulsion hearing, including witness lists or written statements. Ask your district for these documents as soon as you can so that you have plenty of time to review them.

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## Do I have other rights during and after the expulsion process?

**YES.** You have many rights during your expulsion hearing, including:

1. The right to appear in person at your hearing;
2. The right to bring an attorney or other nonlegal advocate to help tell your side of the story;
3. The right to confront and question any witnesses the school district brings;
4. The right to present your own oral or written evidence and witnesses; and
5. The right to neutral panelists (people who don't work at your school site).

After an expulsion hearing, you have the right to a written final decision by the district board of education.

If you are not expelled, then you won and almost always have the right to return to your school. The district cannot appeal a decision not to expel, meaning they cannot expel you again for the same incident.

If you are expelled, you have the right to appeal, which means to have the decision reviewed. Check with your local county board of education about appeal procedures and deadlines (usually 30 days). You should not be expelled for more than one year and may be able to return to your school after expulsion.

## INVOLUNTARY TRANSFERS

### What is an involuntary transfer?

**AN INVOLUNTARY TRANSFER IS** when a school district transfers a student to an alternative school against the wishes of the student or their parent or guardian. Schools have a lot of discretion in transfers, but there are important limits on their discretion.

### What are alternative schools?

**ALTERNATIVE SCHOOLS INCLUDE** county community schools, community day schools, and continuation schools. These schools may be beneficial for some students, but they generally do not provide the same educational or extra-curricular opportunities as traditional schools.

### Do I have rights if I am involuntarily transferred to a county community school?

**YES.** You may be involuntarily transferred to a county community school if you are expelled, referred by a School Attendance Review Board (SARB), or referred under court order.

You cannot be transferred to a county community school solely because you are a homeless or foster youth. You have the right to object to your transfer to a county community school if the school cannot meet your educational needs, you have safety concerns, or if the school is too far from the student's home. Your school district also may not transfer you to a county community school that does not have space for you.

If you are transferred to a county community school based on a SARB referral, you have the right to return to your original school or another traditional school at the end of the transfer period.<sup>viii</sup>

### Do I have rights if I am involuntarily transferred to a community day school?

**YES.** A district may only involuntarily transfer you to a community day school if you are expelled, on probation, referred by a School Attendance Review Board (SARB), or referred through a district level

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referral process. You cannot appeal a transfer to a community day school, but you can appeal an expulsion that led to your transfer. Check with your local county board of education for procedures and deadlines.

## Do I have rights if I am involuntarily transferred to a continuation school?

**YES.** A district may only involuntarily transfer you to a continuation school if you committed a violation of the Education Code, have been [habitually truant](#) or have had irregular attendance in your required classes.<sup>ix</sup> Your district may only transfer you to a continuation school in the semester when the act occurred or the semester after.

Your district may not transfer you to a continuation school unless other attempts to change your behavior fail or your presence at school causes a danger to others or disrupts the typical school day.

## Are there rights I can assert before and after a final decision to involuntarily transfer me to a continuation school?

**YES.** You have the right to request a meeting with a representative of the school district superintendent before your involuntary transfer to a continuation school. You have the right to present your side of the story with evidence, advocates, and witnesses. No one from your school can be involved in the final decision to transfer. You have the right to a written notice of your district's final decision. You have the right to return to a traditional high school the following year with consent of your district's superintendent.

## RESOURCES FOR MORE INFORMATION ON SCHOOL DISCIPLINE

- [CA DEPARTMENT OF EDUCATION EXPULSION MATRIX](#)
- [FIX SCHOOL DISCIPLINE RESOURCE](#)
- [PUBLIC COUNSEL 2013 SCHOOL DISCIPLINE GUIDE](#)



Published August 2019 by the ACLU Foundations of California  
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<sup>i</sup> California Constitution, Article IX, sections 1, 5.

<sup>ii</sup> See California Education Code sections 48900.5, 48900.6.

<sup>iii</sup> California Education Code section 48915(a).

<sup>iv</sup> See California Education Code sections 48900, 48900.2, 48900.3, 48900.4, 48900.7, and 48915.

<sup>v</sup> See California Education Code sections 48900.5, 48900.6.

<sup>vi</sup> California Education Code section 48918.

<sup>vii</sup> California Education Code section 48918.

<sup>viii</sup> California Education Code section 1981 (b)(4).

<sup>ix</sup> California Education Code section 48432.5.