



BARGAINING ADVISORY

SB 419: PUPIL SUSPENSION AND EXPULSION UPDATED

Background

This document updates two previous C4OB Bargaining Advisories: *AB 420: Pupil Suspension and Expulsion (2/24/15)* and *Pupil Suspension and Expulsion (10/22/18)*. It is important to note from the outset that a teacher's ability to suspend a student from his/her classroom remains unchanged.

As you may recall, in 2015, AB 420 amended Education Code Section 48900 by removing willful defiance, in certain instances, as a reason *a principal* may use to suspend or expel students in kindergarten through third grades. That provision, which was to sunset on July 1, 2018, was made permanent in last year's budget trailer bill and is expanded upon in SB 419 (Skinner).

The New Bill: SB 419 (Skinner)

Effective July 1, 2020, SB 419 (Skinner) further amends Education Code Section 48900 to expand the prohibition of suspension and expulsion for willful defiance and disruptive behavior to grades 4 and 5 permanently and to grades 6 through 8 for a trial period, until July 1, 2025. The new bill also extends these prohibitions to charter schools.

The following is a summary of the pertinent sections of the Ed Code:

1. A principal may still suspend or expel students for any of the other reasons enumerated in Section 48900. The following is a list of possible reasons for suspension and/or expulsion:

Causing physical injury	Habitual profanity or vulgarity
Using force or violence	Drug paraphernalia
Firearms, knives, explosives	Receiving stolen property
Drugs and alcohol	Firearm replicas
Robbery or extortion	Sexual assault
Damaging property	Harassing or intimidating witnesses
Stealing	Bullying
Hazing	Electronic bullying
Use of tobacco or nicotine	Obscene acts

2. Principals cannot suspend a pupil from school in grades K-8 for disrupting school activities or otherwise willfully defying the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties.
3. No pupil in grades K-12 may be recommended for expulsion from school for disrupting school activities or otherwise willfully defying the valid authority of supervisors, teachers,



BARGAINING ADVISORY

administrators, school officials, or other school personnel engaged in the performance of their duties.

Suspension from Class (Ed Code Section 48910)

With the words, “Except as provided in Section 48910,” Ed Code Section 48900(k)(2) maintains the ability of a teacher to suspend a pupil in any grade level from class for disruptive behavior and willful defiance for the day of the suspension and the following day. As per Ed Code Section 48910:

1. A teacher may suspend any pupil from class for any of the reasons stated in 48900 (see #1 on the previous page), including willful defiance and disruptive behavior, for the day of the suspension and the following day.
2. The teacher must report the class suspension to the principal and send the student to the principal/designee for appropriate action.
3. A pupil suspended from a class shall not be placed in another regular class during the period of suspension. If the student must remain at the school site, the pupil shall be under appropriate supervision.
4. As soon as possible, the teacher is required ask the student’s parent or guardian to attend a parent-teacher conference regarding the suspension. Other school personnel such as a school counselor or a school psychologist may attend the conference. If requested by the teacher or parent, a school administrator must also attend.
5. The student shall not be returned to the class from which he/she was suspended during two days without agreement of the teacher and principal. If the principal insists on sending the student back to the classroom, this would violate the Ed Code. If this occurs, ask the principal for the directive in writing before allowing the pupil back into the class and contact your CTA representative/site rep as soon as possible to address the violation.
6. A teacher may also refer a pupil, for any of the acts enumerated in Section 48900, to the principal/designee for consideration of a suspension from the school.

Other Requirements

The right to suspend or expel is not unlimited. Section 48900.5 requires that other means of correction be used for a first offense, except when a student, including a special needs student, causes physical injury; possesses a firearm or other dangerous object; possesses, uses or is under the influence of a controlled substance; or commits or attempts to commit robbery or extortion; or if a student’s presence causes a danger to persons. In such cases, a student may be suspended on the first offense.



BARGAINING ADVISORY

A teacher should document the use of other means of correction prior to suspending a pupil from class. Other means of correction may include parent conferences; and/or referral to school support personnel, child study teams, the MTSS committee or other programs that address behavior issues.

Other reasons for suspending or recommending expulsion include sexual harassment, hate violence, and harassment. Section 48900.4 states that students in grades 4 through 12 may be suspended or recommended for expulsion if the principal or superintendent “determines that the pupil has intentionally engaged in harassment, threats, or intimidation, directed against school district personnel or pupils, that is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting classwork, creating substantial disorder, and invading the rights of either school personnel or pupils by creating an intimidating or hostile educational environment.” Making terrorist threats against school officials or property, or both, is another reason for suspension or recommended expulsion.

Special Education

Students receiving special education services are subject to the same suspension rules as students not receiving such services, except that suspensions of students receiving special education services cannot exceed ten days without an IEP “manifestation determination,” meeting 20 U.S.C. Section 1415(k)(1)(B), which is a formal procedure used to determine if a student’s behavioral issue was an expression of that student’s disability. In other words: Did the disability cause the behavior? State law defers to federal law for most of the rules governing suspension and expulsion of students receiving special education services (CA Education Code Section 48915.5).

Multi-Tiered Systems of Support (MTSS)

Under Ed Code Section 48900, schools are encouraged to use MTSS to integrate systems, supports and resources for instruction and behavior in order to enable students to be successful in school. PBIS, Restorative Justice, Trauma Informed Learning, and other strategies may be helpful in providing support to pupils who are experiencing difficulties in class.

Please see the Joint C40B-IPD Advisory *Multi-Tiered System of Support (3/2/2018)* for more information.

Recommendations

Monitor and, Where Appropriate, Bargain Over Changes in District Policies

Given its effective date of July 1, 2020, chapters and districts have time to prepare for the changes enacted by SB 419. As we have seen over the years, districts have misinterpreted the scope of AB 420 and have made policy changes greater than those required by law. Chapter leaders should be aware of the requirements of the statute and actively inform unit members to protect their rights.

Keep in mind that under Section 48910, teachers continue to have the right to suspend students for willful defiance from their classroom for the day of the incident and the following day. Additionally,



BARGAINING ADVISORY

chapters may demand to bargain/consult over student discipline and school safety within the parameters of the Educational Employment Relations Act (EERA). If a district attempts to develop policies regarding suspension from class, such policies are subject to consultation and subject to negotiations over the effects of the proposed policies/requirements.

Participate in the Local Control and Accountability Plan Process

Chapters should engage in developing and monitoring the district's Local Control and Accountability Plan (LCAP) relating to school environment issues. Chapter leaders should work with parents and community members to ensure a safe working and learning environment. Providing resources to educators and students to support a quality learning environment should be a priority. Programs such as Restorative Justice and Positive Behavioral Interventions and Supports (PBIS), or similar programs, may be implemented. Meaningful professional development on alternative methods of discipline should also be negotiated/provided.

Everyone's focus should be on keeping students in school to help them succeed. This will also improve the district's Average Daily Attendance (ADA), allowing it to receive more state funding to help implement new programs.

Participate in Development of the School Safety Plan

Discipline procedures are a component of every school's safety plan. Chapters should ensure that teachers, counselors, and other educators involved with student discipline are included in reexamining the plan to conform to the law, including the teacher's right to suspend from the classroom, which cannot be usurped by administrative practices or Board policies.

Questions should be directed to your local CTA primary contact staff.