

Breaking Developments in CA School Discipline & Juvenile Justice



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Ontario, CA

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Education is a Fundamental Right

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All students in California are entitled to appropriate due process protections before they are expelled or suspended. The legislative goal in enacting the discipline code was to:

"[S]afeguard the constitutional and statutory right of California children to a free education . . . by establishing fair procedures which must be followed before that right is withdrawn."

Slayton v. Pomona Unified Sch. Dist., 207 Cal. Rptr. 705, 713 (1984)



THE NEED FOR DISCIPLINE REFORM IN CALIFORNIA SCHOOLS

The Need for Reform – Far Too Many Students Are Excluded from Our Schools

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No. of Suspensions and Expulsions:

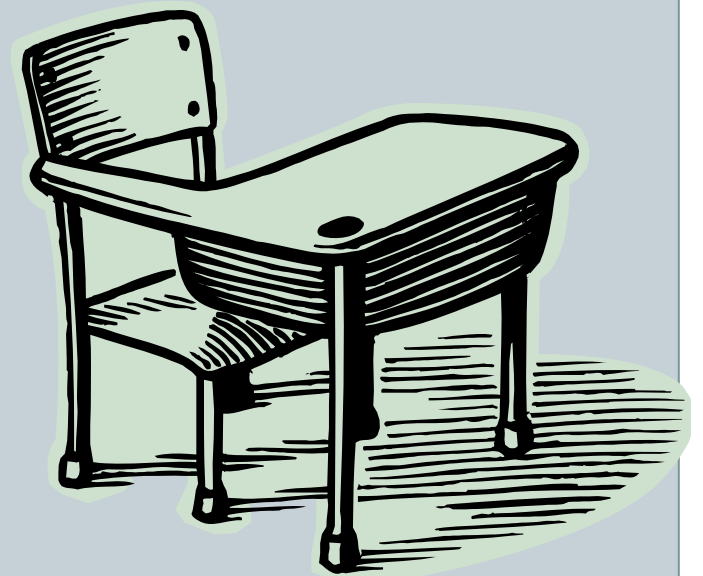
- **2010-11**

- Expulsions – 18,649
- Suspensions – 700,884

- **2009-10**

- Expulsions – 21,147
- Suspensions – 767,962

- **California schools suspend more students than they graduate in a given year.**



A Civil Rights Issue!



- OCR data clearly shows that students of color are disproportionately suspended and expelled in our schools.
- This should be viewed as a Civil Rights issue.
- The state cannot waive the “local control” banner and ignore discriminatory practices imposed on youth of color and other vulnerable student groups.

The Need for Reform: Disproportionate Impact

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Office for Civil Rights Data (2009-10):

- 1 out of every 5 African American students (18%)
- 1 in 9 American Indian students (11%)
- 1 in 14 Latino students (7%) were suspended at least once
- Compared to 1 in 17 white students (6%)

- **A Black student is 3 times more likely to be suspended than a white student in California Schools.**
- **Students with disabilities are more likely to be suspended than those without.**
- **LGBT students are 1.5 to 3 times more likely than their peers to be expelled from school.**

The Need for Reform - Grounds for Suspension and Expulsion

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Expulsions - Most severe grounds cited:

- EC §48900 (c) - 22%
 - (Possession, use, sold controlled substance)
- EC §48900 (a)(1) - 17%
 - (Caused or threatened physical injury)
- EC §48900 (k) - 12%
 - (Willful defiance)

Suspensions - Most severe grounds cited:

- EC §48900 (k) - 42%
 - (Willful defiance)
- EC §48900 (a)(1) - 23%
 - (Caused or threatened physical injury)
- EC §48900 (c) - 7%
 - (Possession, use, sold controlled substance)



**SUSPENSION/EXPULSION/ENROLLMENT DATA
FOR KERN UNION HIGH SCHOOL DISTRICT* (2010-2011)**

*Select Schools	TOTAL EXPULSIONS	TOTAL SUSPENSIONS	EC 48900 (K) SUSPENSIONS	SUSPENSION RATE	TOTAL ENROLLMENT	BLACK ENROLLMENT	LATINO ENROLLMENT	WHITE ENROLLMENT
Central Valley High (Cont.)	9	114	82 (72%)	110%	103	1 (1.0%)	100 (97.1%)	2 (1.9%)
East Bakers-field High	175	1,166	750 (64%)	51%	2,258	118 (5.2%)	1,865 (82.6%)	218 (9.7%)
Frontier High	60	552	361 (65%)	22%	2,463	67 (2.7%)	726 (29.5%)	1,469 (59.6%)
Kern Work-force 2000 Academy	17	97	60 (64%)	22%	429	39 (9.1%)	342 (79.7%)	38 (8.9%)
North High	147	693	375 (54%)	34%	1,989	53 (2.7%)	537 (27.0%)	1,314 (66.1%)
Ridgeview High	102	754	511 (68%)	34%	2,188	235 (10.7%)	1,316 (60.1%)	433 (19.8%)
Shafter High	57	513	324 (63%)	34%	1,494	16 (1.1%)	1,302 (87.1%)	156 (10.4%)
South High	115	1,138	723 (64%)	59%	1,915	239 (12.5%)	1,384 (72.3%)	178 (9.3%)
Summit Cont.	3	15	4 (27%)	136%	11	0 (0.0%)	1 (9.1%)	9 (81.8%)
Vista Cont. High	40	255	89 (35%)	98%	258	47 (18.2%)	183 (70.9%)	18 (7.0%)
Vista West Cont. High	44	514	245 (48%)	152%	338	32 (9.5%)	152 (45.0%)	143 (42.3%)
District Total	2,040	11, 442	5,628 (49%)	30%	37,452	2,625 (7.0%)	22,341 (59.7%)	10,313 (27.5%)

Discipline Data for Manteca Unified

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- **Identified in the report “Suspended Education in California” as one of the 10 school districts with the highest out of school suspension rates , disaggregated by race/ethnicity.**
 - **Suspension rates for all students was 33%**
 - **For Black students it was 60%**
- **“Willful defiance” was cited as the most serious offense for 58% of all suspensions & 16% of all expulsions**

Weston Ranch High School



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- **DataQuest shows Weston had 627 suspensions, with “Willful Defiance” cited as the most serious offense for 521 or 83% OF ALL SUSPENSIONS!!!**
- **Weston had 16 expulsions, with “Willful Defiance” cited as the most serious offense for 4 or 25%.**
- **Weston had the highest suspension rate of all the high schools in Manteca Unified at 50%.**
- **Weston had the highest Sec. 48900(k) percentage.**
- **Weston had the highest percentage of black student enrollment at 24%.**

Students Have the Right to be Free from Discrimination in Our Schools



- All pupils have the right to participate fully in the educational process, free from discrimination and harassment. . . 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. EC §201.
- If discipline data shows that certain groups, based on race, ethnicity, or other protected status, are disproportionately suspended or expelled, then a district must take affirmative steps to address the issue.

The Need for Reform - Negative Impact Associated with Exclusionary Discipline

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Lower Academic Achievement

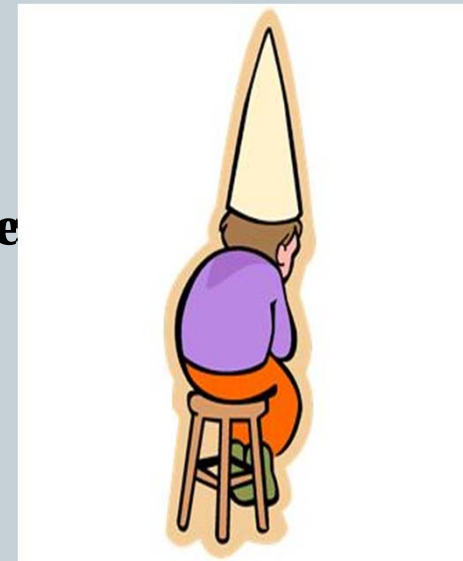
Lower graduation & higher drop-out rates

Worse overall school climate

Increases risk of being victim of violent crime

Significant mental health consequences for students including:

- Lowered self-esteem
- Increased shame
- Social disengagement and alienation
- Breaking of positive adult bonds





**DISCIPLINE-RELATED
REFORM BILLS SIGNED
INTO LAW
(2011-2012)**

Discipline-Related Reform Bills

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- **AB 1729 (Ammiano)**
 - Other Means of Correction
- **AB 2537 (M. Perez)**
 - Clarifying “Zero Tolerance”
- **AB 1909 (Ammiano)**
 - Adequate Notice for Foster Youth
- **SB 1088 (Price)**
 - Ensuring Juvenile Justice Youth Reentry
- **AB 2616 (Carter)**
 - More Discretion - Truancy



AB 1729 (Ammiano)

“Other Means of Correction”



- Provides strong legislative intent language that encourages alternatives to suspension and expulsion and recognizes the disproportionate impact on vulnerable student groups.
- Requires other means of correction be used and FAIL prior to “*in-school suspension*” in addition to “out-of-school suspension”.
- Other means of correction may be documented and such documentation can be accessed as a pupil record through existing absolute right to records.
- Provides a comprehensive list of what is recognized as “other means correction,” including PBIS and Restorative Justice.
- Narrows the exception when students may be suspended for a first offense— other means of correction must have failed prior to suspension for when student’s presence threatens to disrupt instructional process or causes a danger to property

Amends EC §§ 48900; 48900.5

AB 1729: The Legislature's Intent Concerning School Discipline



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- “The overuse of school suspension and expulsion undermines the public policy of this state and does not result in safer school environments or improved pupil behavior.”
- “School suspension and expulsion are disproportionately imposed on pupils of color, pupils with disabilities, lesbian, gay, bisexual, and transgender pupils, and other vulnerable pupil populations.”
- “Research has found that nonpunitive classroom discipline. . . are more effective and efficient than suspension and expulsion for addressing the majority of pupil misconduct.”
- “The public policy of this state is to provide effective interventions for pupils . . . avoid exclusion from school.”


AB 1729: Other Means of Correction Include, *But Are Not Limited To*, The Following:

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- A conference between school personnel, the pupil's parent or guardian, and the pupil;
- Referrals to the school counselor, psychologist, social worker, child welfare attendance personnel, etc.;
- Study teams, guidance teams, resource panel teams, or other intervention-related teams that assess behavior, etc.;
- Referral for a comprehensive psychosocial or psychoeducational assessment, including for purposes of creating an IEP or 504 plan;
- Enrollment in a program for teaching prosocial behavior or anger management;
- Participation in a restorative justice program;
- A positive behavior support approach with tiered interventions;
- After-school programs that address specific behavioral issues or expose pupils to positive activities and behaviors, etc.;
- Any of the alternatives described in EC §48900.6.

AB 2537 (M. Perez)

Clarifying Zero Tolerance



- Provides additional discretion for administrators not to make a recommendation for expulsion for certain acts if the factual circumstances do not warrant or other means of correction would address the conduct.
- Encourages making the decision sooner to avoid loss of instruction!
- Clarifies that possession of an imitation firearm does not mandate expulsion.
- Clarifies that possession of over the counter or prescription medication is not an offense for which expulsion or a referral for expulsion is automatic.

Amends EC §§ 48902; 48915

AB 1909 (Ammiano)

Adequate Notice for Foster Youth



- School districts to notify a foster child's attorney and appropriate child welfare designee regarding a pending expulsion, extended suspension proceedings or manifestation determination hearing for a special needs child for offenses for which a response is discretionary.
- Legislative intent language directs that holder of educational rights be invited to all discipline-related meetings for a foster youth.
- Creates procedure for attorneys for foster youth to provide contact information to educational liaisons.

Amends EC §§ 48853.5; 48911; 48915.5; Adds EC §48918.1

SB 1088 (Price)

Ensuring Juvenile Justice Youth Reentry



- Clarifies existing law by prohibiting a school from denying enrollment or readmission to a student on the basis that the youth has had contact with the juvenile justice system.
- Juvenile justice related contact includes: arrest, adjudication by a court, probation supervision, and detention for any length of time.

Amends EC §48645.5



AB 2616 (Carter)

Aligning Truancy Law with Best Practice

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- Aligns truancy laws with best practices by giving administrators additional discretion to determine when a student has a valid excuse for being truant or tardy based on the facts of the pupil's circumstances.
- Encourages a meeting with the student/parent to discuss the root causes and to create a joint plan to improve attendance, instead of sending the child to the police.
- Provides discretion as to whether to involve the juvenile justice system after the fourth truancy, instead of a court taking automatic jurisdiction.
- If under court's jurisdiction, caps a fine at \$50 (down from \$100 plus fees).

Amends EC §§ 48260; 48264.5



**MISSED OPPORTUNITIES
FOR ADDRESSING
EDUCATIONAL EQUITY
(2011-2012)**

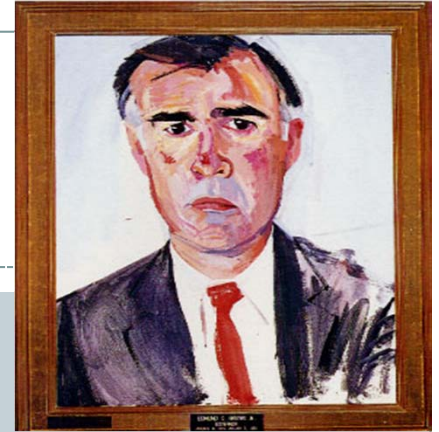
What the Governor Vetoed...



- AB 2242 (Dickinson) – Willful defiance or disruption subjects a student to other means of correction or suspension, not an extended suspended (more than 5 days after referral for expulsion) or expulsion.
- SB 1235 (Steinberg) - Evidence -based whole school solutions like PBIS and restorative justice ENCOURAGED in schools with high rates of suspensions – 25% or more students suspended or subgroups of students suspended; CDE would host regional forums to share best practices, bring together regional leaders and create professional development communities and track high suspenders and progress

Veto Message – the “*Principle of Subsidiarity?*” (AKA Local Control)

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- Veto message for AB 2242, the governor gives total deference to local officials.
- But in a study released by Ed Source, 47% percent of school administrators surveyed thought this category was open to “misinterpretation and overuse”.
- Fifty-five (55) percent asked for a clearer definition of willful defiance to avoid this problem.

The State Is Ultimately Responsible



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- Because EC §48900(k) is so subjective, students of color and other vulnerable student groups are disproportionately suspended and expelled from California schools.
- The State's role is clear under the California Constitution. It is ultimately responsible for ensuring equal educational opportunity and for stopping practices that have a disproportionate impact on youth of color and other protected subgroups, including those with disabilities.

Show Me the Money: What Died in Appropriations



- AB 2145 (Alejo) required data on suspension and expulsion to be reported to the California Department of Education and made available to the public on the CDE’s website (dataquest.org). Data was to be disaggregated by relevant subgroups, including race, ethnicity, language status, and by grounds.
- AB 2241 (Dickinson) established the “Transitioning Youth To Success Program” for the purpose of prioritizing the use of federal Neglected or Delinquent funds so that the funds would be used to provide transition services for youth transitioning from a juvenile detention facility or group homes, so that they would have a better chance of furthering their education or employment.

How The Statewide Reform Effort and Legislative Focus Is Making Strides (Or Continuing The Fight)....

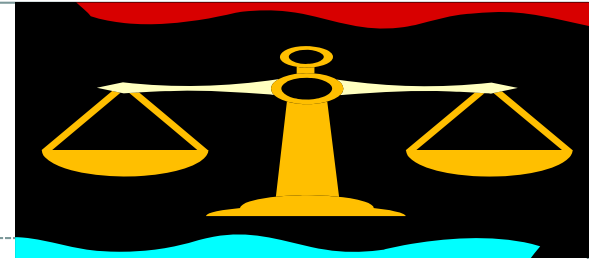


- Data – CDE has made a commitment to produce disaggregated discipline data and to make it available on DataQuest.
- CDE participated in a discipline forum and we are working with CDE to coordinate regional trainings.
- CDE has agreed to look into monitoring efforts concerning discipline and its disproportionate impact.
- Willful defiance – prior to this year not even on the radar screen at the state level, moved to the forefront, hot topic, opens the door for movement on multiple fronts.
- The State Board has been approached to require more discipline-related information in the SARC.



Ensuring That The Reforms Are Implemented

Local Discipline Rules Must be Consistent with Law



- School Boards are required to prescribe rules governing discipline that are “*not inconsistent with law. . .*” EC §35291.
- Parents have the right to be informed “*in advance about school rules, including disciplinary rules and procedures. . .*” EC §51101.
- In developing rules and procedures, schools must solicit participation from 1 representative selected by each of the following groups: parents; teachers; administrators; and secondary pupils.” EC §35291 .5
- What you can do:
 - Request a copy of district’s rules and procedures governing discipline and compare them with the provisions of the new laws.
 - School site discipline rules are usually found in a school’s parent/student handbook; school board’s discipline rules and procedures are usually available on a school district’s website.

What You Can Do In Your Community



1. **Request** a copy of district's policies, rules and procedures governing discipline and compare them with the provisions of the new laws.
 - Where can I find them?
 - Parent/student handbook
 - School district's website
2. **Check:** Do they include the new laws?
3. **Advocate** for the district to change the policies and to educate all school personnel

Strategies for Implementing Change



- Approach Superintendent and/or principal about the need to review rules and regulations governing discipline because of the new laws.
- Approach school board members about the issue and request a board hearing.
- Approach school site councils and DELACS and ask them to review the issue, change school-site policies, and educate all staff.

AB 1729: “Other Means of Correction” Should be Meaningfully Implemented



- Does the district have rules or policies addressing “others means of correction” and are they consistent with AB 1729?
 - If not consistent, they need to change them through a public process.
 - If there is no policy or rule – AB 1729 provides an opportunity to develop one.
- In meeting with Superintendent and on School Board’s agenda:
 - Discuss discipline reform and alternatives to suspension and expulsion.
 - Opportunity for a district to adopt “other means of correction” that are consistent across the district and that help to reduce reliance on suspension and expulsion.
 - Opportunity to request documentation of alternatives – before suspension must show that other means have been used and FAILED

AB 1729: Schools Must Narrow the Exception for First Offense Suspensions



- Under prior law, a student can be suspended for a *first offense*, without other means of correction, if he or she violates EC § 48900 (a), (b), (c), (d), or (e) (offenses involving violence, dangerous weapons, drug sales, robbery or extortion) or if the “*pupil’s presence causes a danger to persons or property or threatens to disrupt the instructional process*”. EC §48900.5.
- AB 1729 amends the law and states that a student can be suspended for a *first offense*, without other means of correction, if he or she violates EC § 48900 (a), (b), (c), (d), or (e) or if the “*pupil’s presence causes a danger to persons.*” EC §48900.5.
- School districts must change their policies and delete reference to “property” or “threats to disrupt the instructional process”. Other means of correction must have been tried and failed before IN-SCHOOL and out-of-school suspension.

AB 2537: Reviewing Rules Governing “Zero Tolerance”



- To be consistent with AB 2537, School Districts should add a provisions to their current rules or policies stating that, with respect to suspensions or recommending expulsions:
 - Unlawful possession of a controlled substance does not include “the possession of over-the-counter medication for use by the pupil for medical purposes or medication prescribed for the pupil by a physician.”
 - The act of possessing an imitation firearm, is not an offense for which suspension or expulsion is mandatory.
 - When determining whether to recommend expulsions that a principal or the superintendent of schools should do so as quickly as possible to ensure that a pupil does not lose instructional time.

AB 1909: Review of Policies Concerning Foster Care Students.



- Each School District must designate a staff person as the educational liaison for foster children.
- Meet with liaison to ensure that he or she knows the obligations under AB 1909 to notify a child's attorney and child welfare and to collect relevant contact information. Request that protocols be developed and put in writing.
- School district's discipline procedures should be changed to include the notice provisions of AB 1909.

SB 1088: Review All Enrollment Policies and Procedures for JJ Youth



- To be consistent with SB 1088, School Districts should add a provision to their current rules or policies governing enrollment, stating that:
- A pupil shall not be denied enrollment or readmission solely on the basis that he or she has had contact with the juvenile justice system, including, but not limited to:
 - (1) Arrest;
 - (2) Adjudication by a juvenile court;
 - (3) Formal or informal supervision by a probation officer;
 - (4) Detention for any length of time in a juvenile facility or enrollment in a juvenile court school.

AB 2616: Review of Truancy Policies and Procedures



- To be consistent with AB 2616, School Districts should add provisions to their current truancy policies to ensure that an excused absence is not limited to what is currently defined in the Education Code.
- Request that the district develop a protocol for developing plans for improving pupil attendance.
- Request that the district's policy include a provision that no student will be referred to the jurisdiction of the juvenile court on the basis of truancy.

What Else Can We do?



- **Spread the word:** Educate parents and students about these new laws.
- **Report any problems:** If you see that students' rights are being violated or a school district refuses to follow the law, go to fixschooldiscipline.org and click on "I Need Help" to report the problems you are seeing



Other Issues on the Educational Equity Radar Screen

How Do These Issues Impact Your Students?



- **Overly subjective and broad terminology in existing Ed Code, e.g., “willful defiance” and “habitually insubordinate or disorderly” conduct.**
 - Potential for abuse at the local level which contributes to the disproportionate short- and long-term exclusion of students of color, LGBT students, and students with disabilities from school.
 - Used as common grounds to suspend, expel, involuntarily transfer, and SARB students to alternative schools while affording students diverging procedural protections under existing law.
- **Stipulated expulsions, “voluntary” and involuntary transfers.**

Expulsion of the “willfully defiant” student vs. SARB’ing the “habitually insubordinate” student.



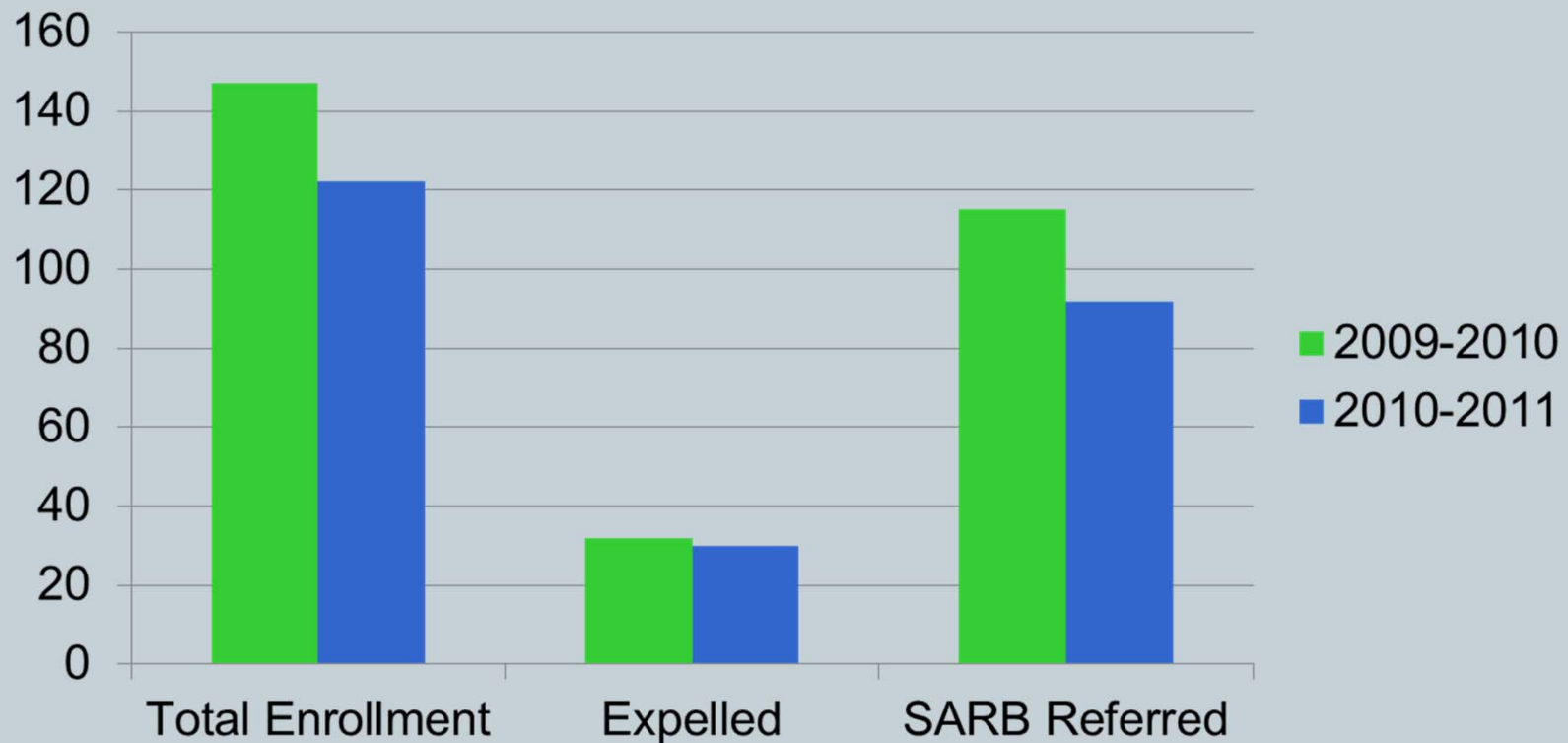
- **Case Illustrations:**

- Gina is in 8th grade. Gina frequently gets out of her seat during class and has difficulty concentrating during lessons. She was recommended for expulsion under 48900(k) for willful defiance and disrupting school activities. Gina was represented by an attorney at her expulsion hearing. The School Board decided to expel Gina and she appealed the decision to the County Board of Education. The County Board of Education overturned the expulsion order finding that the School Board abused its discretion in finding that other means of correction were not feasible.
- Javier is in 7th grade. He has ADHD and takes medication daily. Javier is routinely disciplined in school. Javier was recently referred to SARB for being “habitually insubordinate” and was transferred to community school as a result. Javier was not advised of any right to present evidence, cross-examine any witnesses, or present his own documentary evidence or testimony to challenge the determination that he was “habitually insubordinate” and the decision to SARB him to community school. He was not advised of any right to appeal.
- **The SARB and truancy provisions of the Ed Code provide minimal procedural protections for SARB proceedings and fail to safeguard fundamental education interests**
- **Undermines the discipline and involuntary transfer provisions of the Ed Code**

SARB Referrals to Alternative Schools: A Back Door for School Push Out & Gateway for Delinquency



- Imperial County Example: County Community School Enrollment



Limiting “Opportunity” or Involuntary Transfers to Alternative Schools



- Across the board, California’s alternatives schools disproportionately enroll students of color, primarily Black and Latino youth.
- These schools have the highest dropout rates of all schools in the state.
- Students involuntarily transferred to these schools are afforded little due process protection.
- A study published by the California Dropout Research Project concluded the following concerning California’s alternative schools:

“In general, alternative schools, including continuation and community schools, should not be regarded as state policy strategies for reducing dropouts. On the contrary, there is some evidence . . . that schools use alternative education programs as ‘*dumping grounds*’ for students who display difficulty and vulnerability in relation to school completion.”

http://www.cdrp.ucsb.edu/pubs_reports.htm

What Else Can We Do to Fix School Discipline?

- Define “willful defiance” and limit how it is used to suspend.
- Teacher training in alternatives to discipline, implicit bias, structural racism, and disproportionate discipline – at the beginning, at certification, for continuing education.
- Administrator training & tied to review.
- Stronger investigation and enforcement at State and Federal level.
- Additional due process protections for Charter school removals – currently no oversight/little to no due process for students.
- Limiting the use of stipulated expulsions, “voluntary” and involuntary school transfers.
- Ensuring that expelled students have a meaningful opportunity to re-enroll in their school of origin.
- Curbing the overuse of extended suspensions.



Monitoring the Disproportionate Impact of Discipline Policies in Our Schools

How Do You Know if Students Are Receiving Disproportionate Discipline: Review Discipline Data



- **Sources:**

- **DataQuest** <http://data1.cde.ca.gov/dataquest/>

- ✦ No. of suspensions and expulsions at site and district level.
- ✦ Grounds for suspension and expulsion at the site level.
- ✦ How many students were suspended for “willful defiance”?

- **Civil Rights Data Collection** <http://ocrdata.ed.gov/>

- ✦ Disaggregated suspension and expulsion data for various schools and school districts in California.

- **School Accountability Report Cards (SARC)** must include suspension and expulsion rates for the past 3 years. EC §33126.

You, The Public, Have A Right To Know...



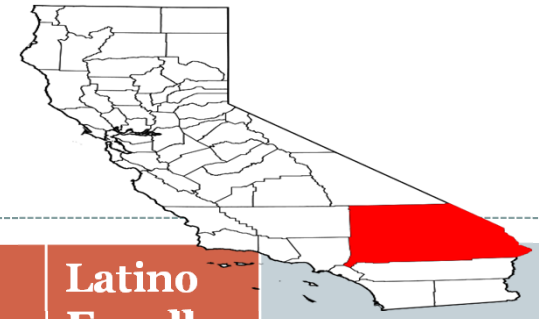
- School districts must collect: suspension information and grounds for suspensions, the number of recommended expulsions; expulsion grounds; whether the pupil was expelled; whether an expulsion order was suspended; the type of referral made after the expulsion; and the disposition of the pupil after the end of the expulsion period.
EC §48916.1.
- Suspension and expulsion data, including the number and grounds for both, must be sent to CDE.
 - Many schools have data by subgroups.
- This data should be made available to the public and school board members upon request.
 - Submit a Public Records Act Request asking for the data.

San Bernardino City Unified



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- **DataQuest shows a total of 16,325 suspensions, with a suspension rate of 31% for 2010-11.**
- **For SBCU High Schools, Sec. 48900(k) was cited as the most serious offense for 61% of all high school suspensions in 2010-11.**
- ***“Suspended Education in California” - “In an analysis of the 5 largest districts. . .the group with the consistently highest risk of suspensions is African American male students with disabilities, with the suspension rate reaching highs of 59% in San Bernardino Unified. . .”***



San Bernardino City Unified High Schools

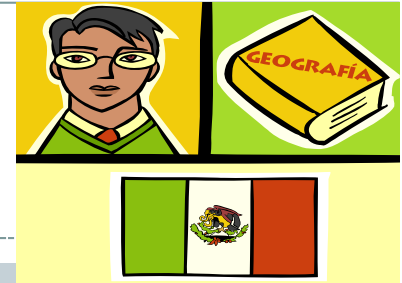
High School	Suspension Rate	Total Suspensions	Percent Sec. 48900 (K)	Black Enrollment	Latino Enrollment
Arroyo Valley	58%	1,702	66%	13%	80%
Cajon	48%	1,387	58%	17%	53%
Middle College	1%	2	50%	10%	69%
Pacific	58%	1,332	58%	17%	71%
San Andreas	29%	204	15%	21%	67%
San Bernardino	87%	2,091	59%	17%	73%
San Gorgonio	73%	2,092	69%	14%	69%
Sierra	32%	195	40%	20%	70%

How to Make a District Take Affirmative Steps to Address Discrimination in Discipline



- Ask to meet with the Superintendent to discuss the issue of discriminatory discipline and what steps to take.
- Ask a Board member to put the issue of discriminatory discipline policies on the Board's agenda and to have a public hearing on the issue.
- Where the district fails to take affirmative steps, consider filing an administrative complaint with:
 - The Office for Civil Rights (OCR Complaint Process: <http://www2.ed.gov/about/offices/list/ocr/complaintprocess.html>)
 - The CDE (Title V Uniform Complaint Process: <http://www.cde.ca.gov/re/cp/uc/>)

Discipline Notices Must be in a Language that Parents, Guardians, etc. Understand.



- In the context of school discipline – notice to parents is very important.
- But an English-only notice to parents who are limited in their ability to speak English is totally meaningless.
- By failing to translate notices into appropriate languages school districts may be violating state and federal statutes and regulations.

Education Code and the Duty to Provide Understandable Notice

EDUCACION

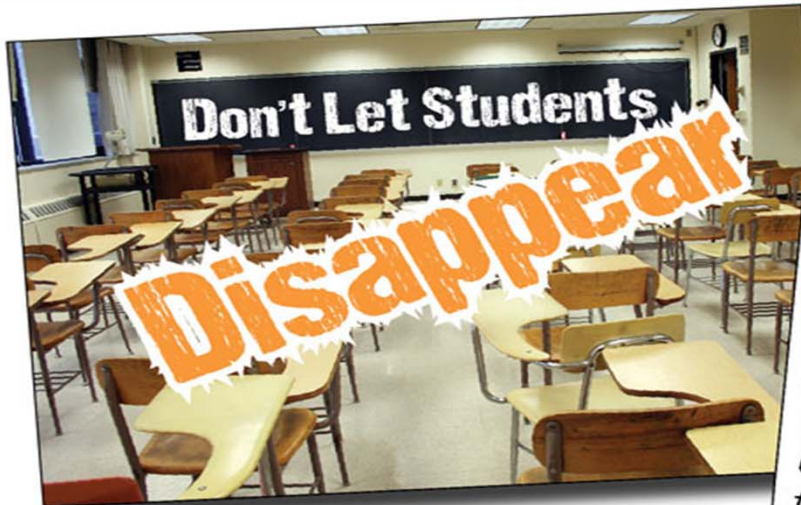


- Approximately 43% of all students come from homes where English is not the first language.
- When 15 percent or more of students enrolled in a public school speak a single primary language other than English *all notices*, reports, statements, and records sent to parents of such students are written in English and the primary language. EC §48985; 5 CCR §11316.

FixSchoolDiscipline.Org – Take Action and Tell Your Story Today!



Fix School Discipline



Post Card

Dear Gov. Brown and
Legislative Leaders,
More than 400,000
California students
disappear every year
when they are
suspended or expelled.
Please help get them
back to school and keep
them there!

Gov. Brown
The Capitol
Sacramento

Other Resources



- **See School to Nowhere – Web – Resources Handout**

Contact



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