MOORE LAW

FOR CHILDREN, APC

Adoption, ART, Conservatorships, Family Law, Estate Planning,
Special Education, School Discipline, Title IX

361 Forest Avenue, Suite 201
Laguna Beach 92651
(949) 336-7711
Meldie@MooreLawOC.com
www.MooreLawOC.com

SCHOOL DISCIPLINE VS. CRIMINAL LAW

SCHOOL DISCIPLINE

Suspension and Expulsion in Private School.

PRIVATE SCHOOL

- Each private school has their own discipline policies
- Not regulated by the state or federal government (unless federal funds)
- Contract issue
- Discretion to do whatever they want is usually built into policies
- Try to negotiate to leave without record
- Leave and remove jurisdiction

Suspension and Expulsion in Public School.

K-12

SCHOOL DISCIPLINE

TYPES OF SCHOOL DISCIPLINE

Other means of correction

Detention

In school

After school

Saturdays

Suspension

Disciplinary Transfer

Expulsion

JURISDICTION REQUIREMENT

CAL. EDUC. CODE 48900(S)

ON SCHOOL GROUNDS

GOING TO OR FROM SCHOOL

DURING LUNCH PERIOD

ON OR OFF-CAMPUS

DURING, GOING TO OR FROM SCHOOL-SPONSORED ACTIVITY

SUSPENSION

- Right to a pre-suspension meeting
- Up to five days at a time
- Can be extended pending expulsion
- Must try alternative means of correction for first offense unless “serious or violent”

"SERIOUS OR VIOLENT"
EDUC. CODE 48900.5

- Offenses involving:
  - Violence
  - Dangerous Weapons
  - Drug Sales
  - Robbery or Extortion
- Or if the "pupil's presence causes a danger to persons"

PRE-SUSPENSION MEETING REQUIREMENTS

EDUC CODE 48911

- Presented with the Allegations and Evidence
- Opportunity to Defend Self
- Other Means of Correction that were Tried First

OTHER MEANS OF CORRECTION

- (1) Parent Conference
- (2) Referrals to the school counselor, psychologist
- (3) Study teams, guidance teams, resource panel teams
- (4) Referral for a comprehensive psychoeducational assessment
- (5) Program for prosocial behavior or anger management
- (6) Participation in a restorative justice program
- (7) A positive behavior support approach with tiered interventions that occur during the school day on campus
- (8) After school programs
- (9) Community Service

EXPULSION CATEGORIES

EDUC. CODE 48915

- Mandatory
- Expected
- Discretionary

MANDATORY EXPULSION

POSSESS A FIREARM

BRANDISH A KNIFE

SELL A CONTROLLED SUBSTANCE

SEXUAL ASSAULT

POSSESS EXPLOSIVE

EXPECTED EXPULSION

Causing Serious Bodily Injury

Possession of Knife

Possession or Use of Controlled Substance or Alcohol

Robbery or Extortion

Assault or Battery on School Employee

DISCRETIONARY EXPULSION

EDUC CODE 48900 ET SEQ.

- Inflict Injury
- Dangerous Object
- Damage to Property
- Theft/Stolen Property
- Tobacco
- Hostile Ed. Environment
- Hate Act
- Obscenity/Profanity
- Drug Paraphernalia
- *[Disruption 48900(k)]*
- Sexual Harassment
- Threaten/Intimidate
- Hazing
- Bullying

ADDITIONAL FINDING REQUIRED TO EXPEL FOR EXPECTED & DISCRETIONARY OFFENSES

EDUC CODE 48915

(a) Other means of correction are not feasible or have repeatedly failed to bring about the proper conduct; or

(b) Due to the nature of the act, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.

EXPULSION RIGHTS

EDUC CODE 48918

- A Hearing within 30 School Days
  - One Continuance up to 30 Calendar Days
- Written Notice at least 10 days prior
  - Time, Date and Location
  - Statement of Specific Facts & Charges
  - Copy of Disciplinary Rules
  - Notice of Parent Due Process Rights
- Right to Attorney or Advocate
- Appeal within 30 Days to Board of Education

EXPULSION RIGHTS CONTINUED

- Inspect & Obtain Copies of Documents to be Used
- Confront & Cross Examine Witnesses at Hearing
- Question all Other Evidence
- Present Oral & Documentary Evidence
- Hearing Shall be Recorded
- Copy of Procedural Safeguards
- Right to Remain Silent

EXPULSION EVIDENCE RULES

Technical Rules of Evidence Do NOT Apply

Hearsay is Allowed

Cannot Expel Solely on Hearsay

The Kind of Evidence Upon Which Reasonable Persons Are Accustomed to Rely in the Conduct of Serious Affairs

Cal. Educ. Code 48918

SPECIAL EVIDENCE RULES FOR SEXUAL ALLEGATIONS

EDUC CODE 48918(C)(3)

- If the hearing is to be public, and the charge is
  - Sexual Assault
  - Sexual Battery
- Complaining witness shall have the right to:
  - Testimony Heard in a Closed Session or
  - Videotaped Deposition or
  - Contemporaneous Examination via Closed-Circuit Television.
  - When Testifying would Threaten Serious Psychological Harm

SPECIAL EDUCATION PROTECTIONS IN EXPULSION

Suspended not more than 10 days consecutively

45 days if Serious Bodily Injury, Drugs, or Weapons

Manifestation Determination IEP Meeting

20 U.S.C. 1415(k); 34 C.F.R. 300.530

MANIFESTATION DETERMINATION

Within 10 days of date of Disciplinary Decision, a MD IEP Meeting must be held

(1) The Conduct was Caused by, or had a Direct and Substantial Relationship to the Disability; or

(2) The Conduct was a Direct Result of the Failure of the School District to Implement the IEP.

RIGHT TO APPEAL

- Board of Education for the School District
- County Board of Education
- Writ in Superior Court

- Special Education
  - Due Process Complaint in the Office of Administrative Hearings
  - Appeal in State or Federal Court

FREQUENT CHALLENGES

- School administrators in charge of discipline
- Little to no training on Education Code
- Do not understand legal requirements
- Dictatorship attitude
- No perspective
- Time is of the essence
- Difficult to subpoena witnesses

SCHOOL DISCIPLINE

Suspension and Expulsion in College & University.

RIGHTS

- To be informed of the allegations & evidence
- To an advisor
- Attorney if charged with a felony/facing dismissal
- To review the evidence
- To present evidence and make a statement
- To offer cross examination questions
- Maybe a hearing

FREQUENT CHALLENGES

- Advisor/Attorney cannot speak
- Can review, but not have copies of the evidence
- Often no hearing
- No/Limited right to confront and cross examine
- One person investigating, deciding guilt and punishment
- Appeals to University Dean, usually rubberstamped
- If prevail on appeal, sent back to be corrected
- Preponderance Standard
- Right to silence held against student

TITLE IX

- Title IX of the Education Amendments of 1972
- Bans discrimination on the basis of sex in educational settings.
- Courts have ruled that sexual harassment and assault are forms of gender discrimination prohibited by Title IX.
- 2011 - the Obama administration released the "Dear Colleague" letter, guidance on how to enforce Title IX. (Guidance, not law)
- 2020 - Betsy Devos released new rules to Title IX (Law 8.14.20)

TITLE IX INVESTIGATIONS

OBAMA ERA

- Preponderance of the Evidence Standard
- No informal dispute resolution
- No right to a hearing
- No or limited cross-examination
- Streamlined investigator only
- No right to an attorney
- Constructive knowledge
- Acts between students/staff anywhere

NEW RULES

- Preponderance or Clear & Convincing Standard
- Victim can elect informal resolution
- Right to a live hearing (virtual)
- Direct cross-examination (virtual)
- Separate investigator & adjudicator
- Right to an attorney
- Actual knowledge
- Only at school/sponsored events

DEFINITION OF SEXUAL HARASSMENT

OBAMA ERA

"unwelcome conduct of a sexual nature."

NEW RULES

- "unwelcome conduct that a reasonable person would determine is so severe, pervasive and objectively offensive that it denies a person access to the school's education program or activity."

DEFINITION OF SEXUAL HARASSMENT

- Expanded to include:
  - Dating violence
  - Domestic violence
  - Stalking as defined in the VAWA

THE END.

MOORE LAW

FOR CHILDREN, APC

Helping Grow and Protect Families

361 Forest Avenue, Suite 201
Laguna Beach 92651
o. (949) 336-7711
c. (949) 505-2672
Meldie@MooreLawOC.com
www.MooreLawOC.com