**SCHOOL SUSPENSIONS & EXPULSIONS**

**MATERIALS**
1) Enough handouts for each student (attached to lesson).
2) Re-useable white board, markers, eraser – if you want one (provided in the PICC).

**TAKEAWAYS**
- Students will have a basic understanding of suspensions and expulsions, and their rights in the process.
- Students will have an opportunity to practice oral advocacy skills.

**QUICK INTRO**
*(Time Check: 1 minute)*

Tell the class: Your names, that you’re *law students* from Stanford Law School, and you’re there to teach a StreetLaw class.

- Remind the students about StreetLaw rules: don’t talk about the specifics of your case, respect your classmates and your teachers when they are speaking, raise your hand if you wish to be called upon, etc.
ICEBREAKER
(Time Check: 5 minutes)

Tell the class: Imagine you are the principal of a high school, and you have to determine when students should be punished.

Ask the class: Brainstorm situations where you believe a student should be disciplined. Follow up on each student’s answer and ask him/her why he/she believes punishing a student is appropriate in that situation.

<table>
<thead>
<tr>
<th>Possible Student Responses</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Students will likely give scenarios that fit into one of the following categories:</td>
<td>Students-given rationales for punishment may include the following:</td>
</tr>
<tr>
<td>• Weapons &amp; Dangerous Objects</td>
<td>• Safety of Students and School Staff</td>
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<tr>
<td>• Drugs &amp; Alcohol</td>
<td>• Other kinds of correction have failed (e.g. parent-teacher conferences, counseling, detentions)</td>
</tr>
<tr>
<td>• School or Private Property</td>
<td>• Ensuring other student’s ability to learn</td>
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<tr>
<td>• Harm to Others</td>
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<tr>
<td>• Tardiness or Absence</td>
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LECTURE: Suspensions & Expulsions
(Time Check: 20 minutes)

Tell the class: Today’s lesson will be about suspensions and expulsions. We will first briefly introduce what types of offenses can lead to a suspension or expulsion. Then, we will talk in more detail about the suspension and expulsion processes, your rights in those processes, and how to challenge both. After the lecture, we will break up into groups and conduct mock expulsion hearings.

What is a suspension? Expulsion?
Define: Suspensions and expulsions temporarily remove students from their school for shorter and longer periods respectively.

<table>
<thead>
<tr>
<th>Suspension Definition (write on the board)</th>
<th>Expulsion Definition (write on the board)</th>
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<tbody>
<tr>
<td>• Removal of a student from school for no longer than 5 school days in a row unless recommended for an expulsion</td>
<td>• Removal of a student from all comprehensive district schools for no longer than one year. (ex. student may be placed in community day school).</td>
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</table>
What are suspendable and expellable offenses?
Suspendable and expellable offenses can be organized under four general categories. The following chart categorizes and simplifies suspendable and expellable offenses listed in the California Education Code (§ 48900, 48915(a)(1)). Write the general categories on the board and give examples of each to the class. There is no need to go through every example, but make reference to suggestions the class made during the icebreaker exercise.

1. Weapons & Dangerous Objects
   - Possessing, using, or selling dangerous objects (ex. guns, knives, fireworks, imitation guns)

2. Drugs & Alcohol
   - Possessing, using, selling, or attempting to sell drugs, alcohol, or any drug-related items

3. School or Private Property
   - Stealing, damaging, or attempting to steal or damage school or private property
   - Receiving property that is known to be stolen
   - Making verbal or written threats to take another person’s property (ex. threatening to reveal a student’s embarrassing secret for money)
   - Making terroristic threats against school property

4. Harm to Others
   - Causing, attempting, or threatening physical harm, except in self-defense
   - Acting offensively toward others, including swearing, bullying, hazing, and harassing
   - Sexually harassing, forcefully kissing, raping, or committing other inappropriate and unwanted touching
   - Disobeying school staff or disrupting school activities
   - Making terroristic threats against school staff

What if a student is constantly late or absent from school?
Explain that one of the purposes of suspensions and expulsions is to correct a student’s behavior. The punishment for not going to school shouldn’t be not going to school! Students cannot be suspended or expelled for being late or absent from school.

What if the offense happened after school?
It depends. A student cannot be suspended or expelled unless the offense happened:
- While on school grounds;
- While going to or coming from school;
- During the lunch period (on or off the campus); or
- During, or while going to or coming from, a school-sponsored activity (ex. school football game, school dance, school club events)

Example: Jack, a student, is walking home from school and starts a fight with another classmate. Can he be suspended? Yes, because he is coming from school.

What if Jack drops off his book bag on his porch before starting the fight? No, because dropping off his book bag at home means he is no longer coming home from school.

1 “Terroristic threats” are defined as “any statement, whether written or oral, by a person who willfully threatens to commit a crime which will result in death, great bodily injury to another person, or property damage in excess of one thousand dollars . . . . Cal. Educ. Code § 48900.7.
Would it make a difference if Jack were heading to basketball practice from his home? Yes, because basketball practice is a school-sponsored activity and a student can be suspended or expelled for going to school-sponsored activities.

**SUSPENSIONS**

Tell the class: Now that you have a general idea of what offenses students can and cannot be suspended or expelled for, we’re going to talk about how suspensions and expulsions differ and how students should approach them.

Explain the general process below for suspensions, and then explain when and how to challenge suspensions. Emphasize throughout that the principal has broad discretion to issue suspensions and decisions generally cannot be appealed.2

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**When to challenge suspensions**

There are two opportunities to challenge a suspension:

1. **Informal Conference with Student:** If the principal intends to suspend a student, he/she must meet with the student. At the meeting, the principal must explain the grounds for the suspension and any evidence against the student. The student must also be given the chance to present their side of the story and any evidence in their defense.

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2 The California Education Code is silent on the right to appeal a suspension. However, local school districts may have their own specific appeal process for suspensions. This generally consists of a letter to the school district stating the basis of the appeal, of which the district reviews and investigates the complaint, and sends written notice of its decision. For example, the Los Angeles Unified School District has established such a process. In practice, such policies may be more or less formal. For example, South San Francisco Unified School District has stated that it has such a policy, but was unable to point to a specific board policy defining the suspension appeal process.
Timing Exception: Generally, this meeting will occur before the suspension. However, if the principal determines that the student presents a “clear and present danger” to other students or school staff, the informal conference may be held after the suspension within 2 days. (Note: This determination is highly discretionary and challenging it will not be met with success)

2. Conference with Parent: School districts are not required to hold a parent conference, but most school districts have adopted this policy. Even if the school does not initially offer to meet with the parent, students should convince parents to try and schedule a conference to discuss the suspension.

How to challenge suspensions

A. Challenging required findings for offenses: Principals have more or less discretion to suspend depending on the specific offense. There are two types of offenses:

1. “Zero tolerance” offenses: If the principal determines a student committed a “zero tolerance” offense, he/she will be immediately suspended and recommended for expulsion. These include the following:
   - Possessing or selling a gun
   - Threatening another person with a knife
   - Selling drugs
   - Possessing a firecracker (or other explosive)
   - Committing or attempting to commit inappropriate and unwanted touching (i.e. sexual assault or battery) (ex. kissing, raping)

Tell the class: Principals have the least discretion for these offenses. Students must persuade the principal that they did not commit the act. Students should gather any and all evidence, including witnesses, cell phone video of the event, etc.

2. All other offenses:³ Because all other offenses are considered less serious than “zero tolerance” offenses, students have more protections. On top of proving that the student committed the act, the principal must make one of following secondary findings:
   a) Student’s presence causes a danger to students or school staff (ex. punching another student)

       OR

   b) Other means of correction have failed to bring about the proper conduct (ex. detention, counseling, parent-teacher conference)

Tell the class: The secondary findings a principal must make are measured against unclear standards that are easy to meet (does disobeying a teacher suggest enough

³ There is a further technical distinction among other offenses that permits the principal to suspend on the first offense. This distinction is unnecessarily distracting, and, in any case, emphasizes the amount of discretion in the process.
hostility to constitute a “danger” to school staff? Is a single detention sufficient to find that “other means of correction have failed”?). On top of squishy standards is the fact that the principal’s decisions generally cannot be appealed. Students should:

- Think of alternative punishments and/or correction measures (ex. detention, counseling, parent-teacher conference).
- Attempt to persuade the principal that he/she did not commit the offense only if he/she has very strong evidence (ex. a cell phone video of the incident).

B. Challenging the length of the suspension: Students may only be suspended for 20 school days total in any given school year. If the suspension would exceed the 20-day limit, the student cannot be suspended.

**EXPULSIONS**

Tell the class: Expulsions are much more serious than suspensions, because an expelled student is prohibited from attending a comprehensive school in their district for a lengthy period. During that period, students often attend a community day school (or other alternative schooling such as continuation school) and are placed on a rehabilitation plan to be readmitted to the district or to the student’s original school.

**Length of Expulsions**
Expulsions generally cannot be longer than the last day of the semester following the semester in which the expulsion occurred.

Exception: If the student committed a “zero tolerance” offense, the expulsion may last for one calendar year from the date of expulsion.

**Expulsion Process**
Because expulsions are longer than suspensions, and thus more serious, students have more rights in the process. Explain the general process below, and then explain when and how to challenge expulsions.
Emphasize that unlike suspensions, the principal does not have any discretion to expel a student. In fact, the principal can only recommend expulsion. To be expelled, the school must prove the student committed the offense (by substantial evidence) at a hearing in front of a group of unbiased school staff. Panel members cannot include staff of the school in which the student is enrolled.

Warn the Class! Principals commonly ask students to sign “stipulated expulsion agreements.” When students sign this form, they agree to be expelled and lose all of their rights in the process (ex. no expulsion hearing). Even if the evidence clearly shows the student committed the offense, most offenses require the school to prove secondary findings. For that reason, a student is well advised not to sign a stipulated expulsion agreement.

What are the potential outcomes of an expulsion hearing?

Not Expelled: Student is eligible to return to school (or other appropriate educational program) immediately. Even if a student “wins” the expulsion hearing, however, he/she may still be transferred to another comprehensive school within the district.

Expelled: Student must be given a program of instruction during the period of the expulsion (usually a county alternative program like community day school).

Suspended Expulsion: Probationary status in which a student is technically expelled, but is allowed to return to his or her comprehensive school placement (or other school within the district).

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4 Students recommended for expulsion may either (1) return to school pending the expulsion hearing or (2) the principal may extend any suspension issued in connection with the prohibited act until the expulsion hearing.

5 Panel members are only considered unbiased insofar as they do not include staff of the school in which the student is enrolled. Generally, there are three panel members composed of principals, vice-principals, and deans. For that reason, panels may still be biased against students. Panels may also include a hearing administrator that “leads” the hearing.
When to challenge expulsions

Conference with Principal: Unless the principal is also suspending a student, the principal is not required to hold a conference with the student or parents. Students should try to schedule a conference anyways: similar to issuing suspensions, principals have broad discretion in recommending expulsion (except for zero tolerance offenses).

Expulsion Hearing: The expulsion hearing will generally occur within 30 school days of the incident. In practice, this means that students recommended for expulsion may not get a hearing for several months if the incident happened close to a holiday.

How to challenge expulsions

Tell the class: Unlike in suspensions, students have extensive rights to help defend themselves in an expulsion hearing, including the following:

- Representation by an attorney or non-attorney (ex. parent)
- Review all documents that will be used against the student (student must request)
- Present evidence, including witnesses
- Question any witness that the school brings to the hearing
- Appeal to the County Board of Education if the hearing was not conducted fairly

A. Challenging required findings for offenses: The diagram below explains what the school must prove for each type of offense. The required findings for offenses in an expulsion are nearly identical in language for the same offenses in the suspension context.

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6 If a potential witness is not willing to appear, students may force them to come by asking the district to subpoena the witness. Also, you may note to the class that harassing or threatening a student to prevent them from speaking at your (or any other student’s) hearing is another grounds for suspension or expulsion (as is retaliating against a student after speaking).

7 Grounds for appeal are very narrow:

1. Whether the Governing Board acted without or in excess of its jurisdiction (mostly timeline issues)
2. Fair hearing before the governing board (allowed to present witnesses, testimony, evidence, etc.)
3. Prejudicial abuse of discretion by the Governing Board (did they choose to expel without sufficient evidence?)
4. Relevant and material evidence which in the exercise of reasonable diligence could not have been produced or was improperly excluded at the hearing (not often used)
Tell the class: Unlike a principal’s highly discretionary decision to suspend, the School Board can only expel a student based on *substantial evidence* that the offense occurred. Students should examine evidence that the school plans to present, and develop a strategy to challenge each of the requirements.

B. Challenging procedural and time requirements: To expel a student, the School Board must ensure that all procedural and time requirements were met. For example, if the student did not receive written notice of the hearing, or was denied a request to review all documents that were to be used against the student, then the student cannot be expelled.

ACTIVITY 1: Mock Expulsion Hearing
(Time Check: 20 minutes)

Hand out the student guide for this exercise at the beginning.

Tell the class: Now you will get a chance to practice what we’ve learned in a mock expulsion hearing.

Split the class into four groups: School #1, Student #1, School #2, Student #2. Each group should have 2-4 students. If there are not enough students in the class, it’s okay to have only two groups, and go through only one case. (Note: Alternatively, if the students are not very engaged, teachers may guide the class through this exercise together without splitting into groups.)

Each group will be responsible for putting on a case for their side. They will be responsible for, at a minimum, asking the witness at least two questions and making a two-minute closing argument. Teachers will play the witnesses.

Read the fact scenario to both sides of each group. Give each side a few minutes to formulate questions for the witnesses, and then let them question the witnesses.
At the end of approximately 15 minutes, start the trials in front of the whole class. First, read out the factual scenario again. Then, have the school present its case followed by the student representative. Repeat with the second case.

Case #1

Yesterday, Michael went hiking with his boy scout group and had a Swiss Army knife with him in his pocket. Today, he wore the same pants to school and forgot to take the knife out of his pocket. Mrs. Smith, Michael’s teacher, sees the knife fall out of Michael’s pocket when he leans over in class. Michael admits that he had the knife with him in school, and his entire class saw it. Michael is later suspended for five days and referred for expulsion. Assume all procedural and time requirements are met.

Witness:
Mrs. Smith (teacher)

• Students should ask questions about Michael’s misconduct in class and any disciplinary measures imposed. You should feel free to be creative in your answers to the student’s questions, but try to make the result unclear. In other words, come up with at least one instance of bad behavior (ex. profane language, graffiti, fights) in the past where disciplinary measures were imposed (ex. in-school detentions, counseling, parent conferences, etc.). As pointed out in the suggested answer, the primary focus should be on whether other means of correction are not possible or have repeatedly failed.

Suggested Answer

• Discussion of the answer should mirror the steps in the handout:
  o Step 1: Possession of a dangerous object—the knife—is an expellable offense
  o Step 2: Offense is school-related, because it happened in class on school grounds
  o Step 3: Possession of a knife is not a zero tolerance offense
  o Step 4: Substantive requirements:
    ▪ Student actually committed the offense: There is no doubt that the student actually committed the offense. In fact, Michael admits he had the knife.
    ▪ Ongoing danger: Michael’s act does not likely suggest that he is an ongoing danger. He did nothing dangerous with the knife, but just had it in his pocket by accident. (Note: Be open to creative answers by students)
    ▪ Other means of correction: Answer will vary depending on Mrs. Smith’s answer to students’ questions regarding Michael’s behavior. Teachers should make a decision based on which group they think has the better argument.
  o Step 5: Problem assumes all procedural and time requirements are met.

Case #2

Jerry’s high school made it to the championship basketball game this year, and the game is scheduled to start 30 minutes after school in the gym. Immediately after school, Jerry runs to
his home one block away and changes into his lucky jeans. Jerry didn’t eat lunch that day, and decides to grab some junior mints at the gas station across the street. Just as he is about to cross the street, Principal Helen, who happens to be Jerry’s neighbor, spots firecrackers hanging out of his lucky jeans. Jerry is later suspended for five days and referred for expulsion. Assume all procedural and time requirements are met.

Witness:
Principal Helen
• Students should ask questions that reveal whether Jerry was headed to the basketball game. You should feel free to be creative in your answers to the students’ questions, but try to make the result unclear. Possible areas to address may include what Jerry was wearing at the time (ex. basketball team spiritwear, book bag), discussions about Jerry’s plans with Jerry’s parents (since they are neighbors), or any conversations Jerry had with friends that the principal witnessed in school (ex. Jerry told George that he might go to the game).

Suggested Answer
• Discussion of the answer should mirror the steps in the handout:
  o Step 1: Possession of a dangerous object—the firecrackers—is an expellable offense
  o Step 2: Whether the offense is school-related will vary depending on how two related issues are resolved.
    ▪ Primary Issue: Whether Jerry planned to go to the game will depend primarily on Principal Helen’s responses to students’ questions. Teachers should make a decision based on which group they think has the better argument.
    ▪ Secondary Issue: Even if it is assumed that Jerry was planning to go to the game after the gas station, it is unclear whether making a stop on the way to a school-sponsored activity is enough to make the offense school-related. In other words, must the school demonstrate that Jerry was headed directly to school with no stops on the way? Perhaps Jerry would have noticed the firecrackers on his way to the gas station, and subsequently plan to drop the firecrackers at home before the game.
  o Step 3: Possession of firecrackers, an explosive, is a zero tolerance offense
  o Step 4: Substantive requirements:
    ▪ Student actually committed the offense: There is no doubt that the student actually committed the offense. Principal Helen saw the firecrackers.
  o Step 5: Problem assumes all procedural and time requirements are met.

Conclusion
(Time Check: 2 minutes)

Thank the students for their time, energy and focus. Ask them if they have any questions about suspensions & expulsions.
### Step 1: Is the student misconduct suspendable or expellable?

<table>
<thead>
<tr>
<th>1. Weapons &amp; Dangerous Objects</th>
<th>2. Drugs &amp; Alcohol</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Possessing, using, or selling dangerous objects (ex. guns, knives, fireworks, imitation guns)</td>
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<thead>
<tr>
<th>3. School or Private Property</th>
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<td>• Stealing, damaging, or attempting to steal or damage school or private property</td>
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<td></td>
<td>• Making terrorist threats against school staff</td>
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</tbody>
</table>

*Remember: Students cannot be suspended or expelled for being late or absent from school!*

### Step 2: Is the offense school-related? To be school-related, the offense must happen:

- While on school grounds
- While going to or coming from school
- During the lunch period (on or off the campus)
- During, or while going to or coming from, a school-sponsored activity

### Step 3: Is the misconduct a “zero tolerance” offense?

- Possessing or selling a gun
- Threatening another person with a knife
- Selling drugs
- Possessing a firecracker (or other explosive)
- Committing or attempting to commit inappropriate and unwanted touching (i.e. sexual assault or battery) (ex. kissing, raping)

### Step 4: Are the suspension or expulsion substantive requirements met?

<table>
<thead>
<tr>
<th>Suspension Requirements</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Zero Tolerance Offenses*</td>
<td>All Other Offenses</td>
</tr>
<tr>
<td>Student committed the offense</td>
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<tr>
<td>2. Either:</td>
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<tr>
<td>(a) Student’s presence causes a danger to students or school staff OR</td>
<td>(a) Act suggests student is a continuing danger to the physical safety of others or self OR</td>
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<tr>
<td>(b) Other means of correction have failed to bring about the proper conduct</td>
<td>(b) Other means of correction are not possible or have repeatedly failed</td>
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*If principal determines student committed zero tolerance offense, he/she must recommend the student for expulsion*

### Step 5: Are the suspension or expulsion procedural and time requirements met?

**Suspension Requirements**

- Suspension no longer than 5 school days unless also recommended for expulsion
- 20 total suspension days in school year

**Expulsion Requirements**

- Student Conference with Principal

*Other requirements are highly discretionary and should not be challenged*

<table>
<thead>
<tr>
<th>1. Principal recommends student for expulsion</th>
<th>2. Written notice of hearing date sent to parent 10 days before hearing</th>
<th>3. Expulsion hearing within 30 days of incident unless student requests later date (up to 30 days)</th>
<th>4. Impartial panel recommendation within 3 days of hearing</th>
<th>5. School Board makes decision to expel or not within 10 days (and sends written notice to student)</th>
<th>6. Expulsion (up to one year)</th>
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<td>Other Rights:</td>
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<td>• Representation by an attorney or non-attorney (e.g. parent)</td>
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<td>• Review all documents that will be used against the student</td>
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