

## **MEETING MINUTES**

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As authorized by the County of Sonoma Public Health Recommendation for Safely Holding Public Meetings, dated September 22, 2021, and Government Code section 54953(e)(1)(A), the Santa Rosa City Schools Special Board Meeting of February 15, 2023 starting at 5:30 pm, is in a hybrid format. The public can attend and comment in person by presenting a blue card to the Executive Assistant at the Santa Rosa High School Multi Purpose Room (1235 Mendocino Ave. Santa Rosa, Ca. 95401) or attend and comment in a virtual format via Zoom by using the virtual hand raising feature. For more information on virtual attendance (including how to watch, give public comment and listen in Spanish) please click [HERE](#).

Según lo autorizado por la Recomendación de la Oficina de Salud Pública del Condado de Sonoma para la Celebración Segura de Reuniones Públicas, con fecha del 22 de septiembre de 2021, y la sección 54953(e)(1)(A) del Código del Gobierno, la reunión especial de la mesa directiva de del distrito escolar Santa Rosa City Schools del 15 de febrero de 2023 a partir de las 5:30 pm, se llevará a cabo en formato híbrido. El público puede asistir y comentar en persona en la sala de Santa Rosa High School (1235 Mendocino Ave, Santa Rosa, CA 95401) o asistir y comentar en un formato virtual a través de Zoom ,usando la función para levantar la mano virtual. Para obtener más información sobre la asistencia virtual (incluido cómo mirar, dar comentarios públicos y escuchar en español), haga clic [AQUÍ](#).

Individual speakers shall be allowed up to three minutes to address the Board on each agenda item. The Board may limit the total time for public input on each item to 20 minutes. With Board consent, the presiding officer may increase or decrease the time allowed for public presentation, depending on the topic and the number of persons wishing to be heard. The presiding officer may take a poll of speakers for or against a particular issue and may ask that additional persons speak only if they have something new to add (BP 9323).

Se les permitirán a los oradores hablar de manera individual por tres minutos ante la mesa directiva sobre cada tema incluido en la agenda. La mesa directiva puede limitar el tiempo total para la participación del público a 20 minutos por cada tema. Con el consentimiento de la mesa directiva, la presidenta puede incrementar o disminuir el tiempo asignado para los comentarios del público, dependiendo del tema y la cantidad de personas que deseen ser escuchadas. La presidenta puede llevar a cabo una encuesta para determinar cuántos oradores están a favor o en contra de un tema en particular, y puede pedir que otras personas hablen solo si tienen algo nuevo que agregar (BP 9323).

For questions or comments, please contact the Superintendent's Office at (707) 890-3800 ext. 80201 or mmartin@srcs.k12.ca.us.

To view future board meeting dates, click [HERE](#).

To view agendas and minutes from July 2016 - August 12, 2020, click [HERE](#).

To view agendas and minutes prior to July 27, 2016, please contact the Superintendent's Office at (707) 890-3800 ext. 80201, mmartin@srcs.k12.ca.us.

To view recordings of past board meetings, click [HERE](#).

**MISSION:** SRCS ensures equitable access to a transformative educational experience grounded in the assets of our students, staff, and community. We nurture the whole student in an engaging, challenging, and safe environment. We recognize and value each student's individuality and our community's cultural wealth.

**VISION:** SRCS will send students into the world empowered to find purpose, think critically, embrace diversity, work together, and adapt to our changing planet, and live healthy and fulfilling lives.

**A. CALL TO ORDER (5:30 p.m.)**

**1. Pledge of Allegiance**

President Manieri led the Pledge of Allegiance.

**2. Public Comment On Agenda Items Only**

There was no public comment.

**B. DISCUSSION / ACTION ITEMS**

**1. (Discussion) Board Governance Training**

The speakers for the Board Governance Training:

Anna Trunnell, Superintendent

Namita S. Brown, Fagen Friedman & Fulfrost, LLP

David R. Mishook, Fagen Friedman & Fulfrost, LLP

**Discussion items:**

Law and Best Practice for School Discipline: The training topics such as student discipline/expulsion will provide the Board with opportunities to calibrate the understanding of laws, policies, and procedures.

The duration of the Board's questions and comments on School Discipline lasted 1 hour, 8 minutes.

Brown Act Teleconferencing Rules: With the onset of AB 2449, the Board received information in order to continue options for remote videoconference meeting participation.

The duration of the Board's questions and comments on the Brown Act Teleconferencing Rules lasted 48 minutes.

**C. ADJOURNMENT**

The meeting adjourned at 8:40 pm.



# School Discipline

Laws and Best Practices

Santa Rosa City School District  
Governing Board  
February 15, 2022

Presented By:  
Namita Brown, Esq.  
David R. Mishook, Esq.

# Aims of Training

- Clarify Legal Obligations and Limitations
- Protect Student Rights
- Discuss Best Practices
- Foster Uniformity
- Promote Equity

# Grounds for Suspension & Expulsion



- ❑ Physical injury (caused or attempted)
- ❑ Willful force or violence (*except self-defense*)
- ❑ Firearm, knife, explosive or other dangerous object
- ❑ Controlled Substances
- ❑ Robbery or extortion
- ❑ Property damage
- ❑ Theft
- ❑ Tobacco
- ❑ Obscenity and profanity

Ed. Code § 48900(a)-(i)

# Grounds for Suspension & Expulsion



- ❑ Drug paraphernalia
- ❑ Sale of Soma
- ❑ Hazing
- ❑ Aiding or abetting physical injury
- ❑ Disruption/defiance (suspension only)
- ❑ Receiving stolen property
- ❑ Imitation firearm
- ❑ Sexual assault/battery
- ❑ Harassment of witness
- ❑ Bullying, including by electronic means

Ed. Code § 48900(j)-(t)

# Grounds for Suspension & Expulsion

- 48900.2: Sexual harassment
- 48900.3: Caused, attempted to cause, threatened to cause, or participated in hate violence
- 48900.4: Harassment, threats, or intimidation
- 48900.7: Terroristic Threats (48900.7)

# Limitations on Suspension

- 48900.5
  - Requires “Other Means of Correction” be exhausted
    - Conference; Counselor/LCSW/Psych Referral; SST/COST; SpEd Assessment; Anger Management; Restorative Justice; PBS; After School; Community Service (48900.6); etc...
  - Unless (a), (b), (c), (d), or (e) offense
    - OR
  - “Pupil’s presence causes a danger to persons.”

# Limitations on Suspension

## ■ Legal:

- 5 Consecutive Days
  - What is the standard being used?
- 20 Days Total
  - What is not being considered

## ■ Practical:

- Age of student
- Aim of suspension – Will this solve the underlying issue
- Disability (will come back to this later)

# Mandatory Expulsion:

- ❖ Possessing, selling, or otherwise furnishing a firearm;
- ❖ Brandishing a knife at another person;
- ❖ Unlawfully selling a controlled substance;
- ❖ Committing or attempting to commit a sexual assault or committing a sexual battery; or
- ❖ Possession of an explosive.

Education Code section 48915

# Mandatory Recommendation Unless Inappropriate:

- Causing serious physical injury to another person, except in self-defense;
- Possession of any knife, explosive, or other dangerous object of no reasonable use to the student;

# Mandatory Recommendation Unless Inappropriate (cont.):

- ❑ Unlawful possession of any controlled substance, except for the first offense of the possession of not more than one ounce of marijuana, other than concentrated cannabis;
- ❑ Robbery or extortion;
- ❑ Assault or battery, as defined by Penal Code sections 240 and 242, upon any school employee.
- ❑ Supporting findings required.

# Discretionary Expulsion:

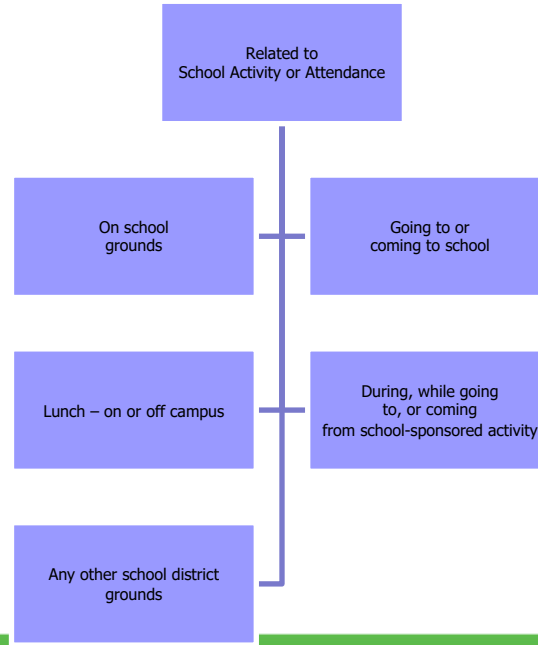
The principal or Superintendent, at his or her discretion, may recommend a student's expulsion for committing any other act which is grounds for suspension. Supporting findings required.

# Supporting Findings

To expel for “mandatory unless inappropriate” or “discretionary” offenses, the District must make one of these two findings:

- other means of correction are not feasible or have repeatedly failed to bring about proper conduct;
- due to the nature of the act, the presence of the student causes a continuing danger to the physical safety of the students or others.

# Jurisdiction for Student Discipline



# Timing

- Recommendation occurs after “determination” that incident occurred.
  - Statute does not provide timeline
    - Information needs to be acted on expeditiously
    - Longer gap raises due process issue
  - Education Code also does not provide a statute of limitations
    - Also raises due process issues

# Evidentiary Standard

- “Substantial Evidence”
  - Must be some direct evidence,
  - on which a reasonable person could rely,
  - to support each required finding

# Admissible Evidence

- Hearsay is defined as: evidence based not on a witness's personal knowledge, but on another's statement not made under oath.
- Hearsay is admissible, but cannot be the sole basis of a required finding.

# Admissible Evidence

- Hearsay exceptions are many, but main exceptions include:
  - Admissions of the “party opponent” (the student facing expulsion)
  - Statement against interest (statement by another student who knowingly made a self-damaging admission that also implicated the student facing expulsion)
  - Official records (mostly procedural and background information)
  - Confidential Witness Statements

# Admissible Evidence

## ■ Confidential Witness Statements

- Finding of good cause that disclosure of either the identity of a witness or the testimony of that witness at the hearing, or both, would subject the witness to an unreasonable risk of psychological or physical harm.
- After finding determination, the testimony of the witness may be presented at the hearing in the form of sworn declarations which shall be examined only by the governing board or the hearing officer or administrative panel.
- Copies of these sworn declarations, edited to delete the name and identity of the witness, shall be made available to the pupil.

# Special Evidentiary Rules for Sexual Assault

- Complaining witness must be given five days' notice of potential testimony
  - Right to two adult support persons
  - If open expulsion hearing, right to testify closed to public
    - Ability to testify in separate room, away from accused student
- Bar on testimony regarding past sexual conduct of complaining witness unless a finding of "extraordinary circumstances"

# Sexual Assault/Harassment and Title IX

- Title IX Regulations from prior administration created substantial new procedural requirements for any discipline falling under Title IX
  - Expected that in Spring 2023, current administration will finalize new requirements and roll back procedures
- Until then, there are unresolved tensions between timelines under Title IX and Ed Code

# Bullying/Electronic Acts

- EC 48900(r): bullying, including by electronic means (cyberbullying), is a suspendable/ expellable offense
- Free Speech vs. Harm
  - Directed at specific person(s);
  - Occurred during school environment; or
  - Directed at school environment; or
  - Causes substantial disruption (foreseeability)

# Expulsion Timelines

- Recommendation upon “determination” by Principal or Superintendent
- Extension of suspension pending expulsion – Preceded by meeting
- Time to hold AHP or Board Hearing – 30 *school* days after “determination”
  - District must grant one 30 *calendar* day extension upon parent request
  - Board may grant additional *calendar* day extensions upon parent request
  - District may extend by 5 schooldays for “good cause”

# Expulsion Timelines

- Notice of Hearing must be sent 10 calendar days prior to hearing
  - Notice includes statement of rights afforded to student
  - Student may ask Board to issue subpoenas; decision is discretionary
- AHP has 3 school days following panel hearing to issue written recommendation
- Board has 40 school days from recommendation to make decision
  - During Summer, business days counted as school days unless “impractical” because Board has taken summer recess of more than two weeks.

# Board Action

- Not to expel
  - With few exceptions, student has right to go back to prior placement
- Expel
  - Until “no later than” the next semester, unless
  - 48195(c), then full calendar year
    - [Possession of firearm, brandishing knife, drug sales, sexual assault, explosive]
- Suspend Expulsion

# Board Action

- Terms of Expulsion
  - Referral to Community School program
  - Rehabilitation Plan, which may include:
    - recommendations for improved academic performance
    - tutoring
    - counseling,
    - special education assessments
    - job training, employment
    - community service, or other rehabilitative programs

# Board Action

- Terms of Expulsion: 48915(c) Special Rules for Placement:
  - (1) Is appropriately prepared to accommodate pupils who exhibit discipline problems.
  - (2) Is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school.
  - (3) Is not housed at the schoolsite attended by the pupil at the time of suspension.

# Board Action

## ■ Suspended Expulsions

- Rehabilitation Plan for one year
- Terms may include move to new program, counseling, etc.
- May involve parents, but parent involvement cannot prejudice student's ability to be readmitted
- Student on "probationary status" for year
- Further violation of 48900 may lead to enforcement of expulsion
- After one year and successful rehabilitation, Board *must* readmit student fully
- After one year and successful rehabilitation, Board *may* expunge expulsion record

# Board Action

## ■ Consideration

- Deliberation must be in closed session
- If “any other person” is admitted to the closed deliberation session, then parent or guardian must be allowed to attend
  - Board is entitled to legal counsel
- “Final Action” to expel pupil must be taken only in open session
  - Education Code does not address stipulated agreements

# Appeals

- Student has right to appeal to County Board of Education
  - 30 Day deadline to appeal
  - County Board action is limited:
    - Whether the District's Governing Board acted without or in excess of its jurisdiction
    - Whether there was a fair hearing before the governing board
    - Whether there was a prejudicial abuse of discretion in the hearing
      - District has not met procedural requirements
      - Decision is not supported by findings prescribed by Section 48915
        - Results in remand for adoption of required findings
      - Findings are not supported by the evidence
    - Whether there is relevant and material evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the governing board
      - Results in remand or de novo hearing

# Readmission After Expulsion

- Board Decision
- Readmission required after successful completion of rehabilitation
  - Unless, continued presence of pupil is danger to campus safety, or the safety of pupils or staff
- Education Code silent on what occurs when readmission is denied
  - Best Practice: set a new date of potential compliance

# Admission of Students Expelled from Other Districts

- Board Decision
- Readmission required after successful completion of rehabilitation
  - Unless, continued presence of pupil is danger to campus safety, or the safety of pupils or staff
- Education Code silent on what occurs when readmission is denied
  - Best Practice: set a new date of potential compliance



**F3 Law**

# **Special Education, Disability & Student Discipline**

# Additional Legal Protections

- **Protections Afforded to Students with Disabilities**
  - Individuals with Disabilities Education Act (“IDEA”)
  - Section 504 of the Rehabilitation Act of 1973 (“Section 504”)
  - Americans with Disabilities Act (“ADA”)
  
- **Enforcement**
  - Office of Administrative Hearings (“OAH”)
  - California Department of Education (“CDE”)
  - U.S. Department of Education/Office for Civil Rights (“OCR”)
  - State and Federal Courts

# 3 Categories of Removal

- **Category 1: 10 Days or Fewer**
  - General Education Discipline Rules Apply
  - BUT, Determine on a Case-by-Case Basis
    - Inherently “unfair”
    - Should include consultation with a special education administrator who is familiar with student’s disability and IEP

# 3 Categories of Removal

- **Category 2: Over 10 Days, But NO Change in Placement**
  - The proximity of the removals to one another;
  - Behavior Related or Not?
- **Category 3: Over 10 Days = Change in Placement**
  - Expulsion automatically change in placement
  - Reset each school year

# Services After 10<sup>th</sup> Day

- Beginning with the 11<sup>th</sup> day of suspension, student is entitled to:
  - **Educational Services** that allow the student to
    - (1) continue to participate in the general curriculum and
    - (2) continue to progress toward goals and objectives.
      - Requires IEP member or team consultation depending on length of removal

# Services After 10<sup>th</sup> Day Cont...

- Receive, as appropriate, a functional behavior assessment and **behavioral intervention** services and modifications that are designed to address the behavior violation so that it does not recur.

# Manifestation Determination Meeting

- Held within 10 school days of incident
  
- Includes all relevant members of Student's IEP team, including parents
  
- Team must review all relevant information in student's file, including (BUT NOT LIMITED TO):
  - (1) the student's IEP,
  - (2) teacher observations, and
  - (3) parent input.

# Manifestation Determination Questions

- **Team must determine:**
  - (1) whether student's conduct in this incident was caused by, or had a direct and substantial relationship to, student's disability, and/or
  - (2) whether student's conduct in this incident was the direct result of the District's failure to implement the student's IEP.

# Manifestation Determination Results

- **If yes:**
  - Team must conduct a functional behavior assessment and develop or review student's behavior intervention plan.
  - Student has a right to return to his/her placement unless parent consents to a change in placement.

# Manifestation Determination Results

- **If no:**
  - District may proceed with expulsion if school site believes expulsion is appropriate or otherwise proceed with continued discipline of student.

# Section 504 Protections

- Disciplinary rules and procedures under Section 504 are similar to those of the IDEA, but do not contain all of the disciplinary provisions provided for under the IDEA.
- One option a district can choose to satisfy its Section 504 obligations is to provide the same disciplinary protections that are available to IDEA-eligible students.
  - Includes timelines and addressing similar manifestation questions



# F3 Law

## Next Level Client Services

### Special Projects

- Study emerging and converging issues
- Strategize and support district leadership:
  - Supplement/fill key staff positions
  - Charter petition review
  - Transportation studies
  - Facilities Master Plan RFPs

### Governance Support

- Build strong governance teams:
  - Conduct governance workshops
  - Develop board self evaluations
  - Prepare for challenging topics/meetings
  - Draft accountability calendar
  - Create governance handbook from bylaws

### Policy, Advocacy, Legislative Needs

- Monitor state and federal legislation
- Forecast emerging issues to anticipate policy
- Advise governance teams with advocacy efforts

### Mentoring/Coaching

- Coach leadership teams
- Mentor incoming Superintendents:
  - Executive transition plans
  - Goal setting
  - Cabinet development





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# Brown Act Teleconferencing Rules

Santa Rosa City Schools  
February 15, 2023  
Presented by: Namita Brown



# Traditional

- Traditional Brown Act teleconferencing rules require a quorum of the Board to meet in person within the District's jurisdiction, the posting of the members' remote location on the agenda, and to provide public access to each teleconferencing location (Government Code section 54953(b))



# Assembly Bill (AB) 361

- Requires that the Board make factual findings every 30 days to justify remote meetings
- As a threshold matter, a **proclaimed state of emergency must exist\*** and the Board must find either:
  - State or local officials have imposed or recommended social distancing measures, or
  - As a result of the proclaimed state of emergency, meeting in person would present imminent risks to the health or safety of the attendees (Government Code section 54953(e))

\*Governor Newsom has indicated the current state of emergency will expire on February 28, 2023



# AB 2449

- Hybrid model of physical and remote attendance for Board members
- At least a quorum of members must participate in person from a single, physical location clearly identified on the agenda and within the Board's jurisdiction (Government Code section 54953(f)(1))
- F3 NewsFlash
  - <https://f3law.com/insights/newsflash/public-meeting-management-and-recent-brown-act-updates/>



# AB 2449 Continued

- If the physical attendance quorum is met, a member may request virtual attendance at the Board meeting under two circumstances:
  - (1) "just cause" and/or
  - (2) "emergency circumstances"



# “Just Cause”

## ■ Qualifying Reasons:

- (1) Childcare or caregiving need (child, parent, grandparent, grandchild, sibling, spouse, or domestic partner) that requires the member to participate remotely
- (2) Contagious illness prevents the member from attending in person
- (3) A need related to a defined physical or mental disability that is not otherwise accommodated for
- (4) Traveling while on official business of the Board or another state or local agency



# “Just Cause” Continued

- Notification and Procedure:

- Must notify the Board at the earliest opportunity, including at the start of a regular meeting, of the need to participate remotely for just cause
- Provide a general description of the circumstances relating to their need to appear remotely at the given meeting
- Member may only use “just cause” for two (2) meetings per calendar year



# “Emergency Circumstances”

- “Emergency circumstances” means a physical or family medical emergency that prevents a member from attending in person
- A member must make a request to the Board to allow the member to meet remotely due to an emergency circumstance, and provide a general description of the circumstances justifying such attendance (generally not to exceed 20 words and does not need to include any medical diagnosis or disability, or any personal medical information that is already exempt under existing law)
- Must make each request “as soon as possible”
- Board must take action to approve the remote attendance at the start of the meeting; if the request does not allow sufficient time to be placed on the agenda, then the Board may act at the beginning of the meeting pursuant to Government Code section 54954.2(b)(4)



# Additional Requirements to Participate Remotely under AB 2449

- Before any action is taken during the meeting, the member must publicly disclose whether any other individuals 18 or older are present in the room at the remote location with the member, and the general nature of the member's relationship with any such individuals
- Must participate through both audio **and** visual technology
- Cannot be for more than three (3) consecutive months or 20 percent of the regular meetings for the Board within a calendar year; if the Board meets fewer than 10 times per calendar year, cannot be for more than two (2) meetings



# Technological Requirements for Virtual Meetings

- Notice, agenda, and public access:
  - The agenda does not need to be posted at all teleconferencing locations
  - Public access only needs to be assured at the teleconference location identified as the singular physical location at which a quorum of the Board will meet, and the notices and agenda do not need to list the individual remote locations that members might attend from
  - The typical notice and agenda required under the Brown Act must indicate how the public may access the meeting and offer comment



# Technological Requirements Continued

## ■ Notice, agenda, and public access:

- The Board must provide either a two-way audiovisual platform or a two-way telephonic service and live webcasting of the meeting so the public may remotely hear, observe, and address the Board during the meeting
- The agenda must identify and include an opportunity for all persons to attend via a call-in option, an internet-based service option, and at the in-person location of the meeting

## ■ Public Comment:

- An individual may be required to register for public comment before being allowed to provide public comment, where a third-party (e.g., Zoom, Microsoft Teams) is employed
- However, Board prohibited from requiring public comments be submitted in advance of the meeting and specifies that the Board must provide an opportunity for the public to address the Board and offer comment in real time



# Technological Requirements Continued

- Disrupted broadcasting procedures:
  - If the broadcasting of the meeting to the public by phone or by Internet is disrupted, the Board is prohibited from taking further action on agenda items until public access is restored.
  - Actions taken on agenda items during a disruption are subject to challenge



# Traditional Brown Act Rules and New Rules under AB 2449

- AB 361 sunsets on January 1, 2024 (however, as it only applies during a proclaimed state of emergency, which is expected to end on February 28, 2023, it will no longer be functional after that date unless a new state of emergency is declared)
- From February 28, 2023, until January 1, 2026 (when AB 2449 sunsets), the Board may use traditional Brown Act teleconferencing or AB 2449 rules
- After January 1, 2026, only traditional Brown Act teleconferencing rules will apply—marks a trend toward in-person meetings



# Practical Considerations for AB 2449

- Members will need to coordinate to ensure a physical quorum ahead of each meeting
- If Board votes to not accept remote participation due to an “emergency circumstance,” then that member may only participate as a member of the public and cannot vote on any action item
- Board must balance the need for transparency with the need to participate remotely against the member’s privacy interest, which may be up for debate at the start of a meeting
- Any justification for virtual attendance must be clearly stated on the record to meet the requirements of AB 2449:
  - Justification either for “just cause” notice or a request for Board action due to an “emergency circumstance”
  - Public affirmation of whether any person 18 or older is present in the room at the remote location, and the nature of the member’s relationship with such individual(s)
  - A statement that the member will participate with both audio and video capabilities turned on throughout the meeting (video cannot be turned off)



# Practical Considerations Continued

- Administrative Support and Record-Keeping:
  - Which member has made a request to appear remotely
  - How many times each member has appeared remotely
  - The member's reason(s) for appearing remotely, and any action taken by the Board
  - Whether staff can confirm ahead of each meeting that there will be a physical quorum of members for any given meeting, and who will be in physical attendance





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