

Student Achievement...Achieving Equity

Building Relationships, Improving Student Achievement





Dora Dome Law

Dora J. Dome has practiced Education Law for over 27 years, primarily in the areas of student issues and special education. She graduated from University of Hawaii, Richardson School of Law (J.D.) and from University of California, Los Angeles (B.A.). Ms. Dome also completed a certificate in Diversity and Inclusion through Cornell University in 2021.

In 2016, she published her first book, *Student Discipline, Special Education Discipline, Anti-Bullying and Other Relevant Student Issues: A Guide For Practitioners*, which has been described as a “**must-have**” for anyone seeking to understand student discipline and bullying. In 2017, Ms. Dome published her second book, *Understanding Student Discipline in California Schools: A Parent’s Guide to General and Special Education Discipline*, to assist parents in navigating the school discipline process. This book has also been translated into Spanish! In 2020, Ms. Dome published three new books, *Student Discipline Resource Binder: A Comprehensive Guide for K-12 Schools*, *Improving Student Achievement Through The Creation of Relationships: A Critical Race Theory Counter-Story*, and her latest book, *Student Speech And Expression In Public Schools: A Resource Guide For K-12 schools*. All three books are part of her new series called *Tools For The Trade*.

Ms. Dome currently provides legal representation to school districts on student issues and develops and conducts professional development trainings for district staff that focus on Bullying and Legal Compliance, viewed through an Equity Lens, in a proactive effort to build staff capacity to address the changing needs of their students.

Admitted to the Hawaii State Bar in 1996, Ms. Dome served as a special education consultant and trainer for the Hawaii State Department of Education and Hawaii State Department of Health for five years. Ms. Dome was admitted to the California Bar in 2003. She worked with the education law firm of Dannis Woliver Kelley, (fka Miller Brown and Dannis) for eight years.

Ms. Dome has studied in the areas of Race and Ethnicity, Critical Legal Studies and Critical Race Theory and has been certified as a Cultural Diversity Trainer by the National Coalition Building Institute (aka NCBI). She has developed and conducted trainings for numerous school districts and school boards in the areas of student diversity and equity, student and special education discipline, harassment/discrimination, bullying, special education, trauma sensitive schools, alternative assessments for African American students, Section 504, and student records.

Ms. Dome also regularly presents at association conferences such as ACSA, CSBA and CASCWA. She participated on the Gay & Lesbian Athletics Foundations (aka GLAF) Keynote Panel on “Race and Racism in LGBT Athletics” and presented at the NCAA Black Coaches Association Annual Conference on “Homophobia in Sports.”

Ms. Dome was a Lecturer for eight years at the University of California at Berkeley, teaching Education Law and Policy in Principal Leadership Institute (PLI) Program. She was also an Adjunct Professor at Mills College teaching in the administrative credential program.



STUDENT DISCIPLINE BASICS

February 1, 2024
8:30AM – 11:30AM

EAST SIDE UNION HIGH SCHOOL DISTRICT

Presented by:
Dora J. Dome, Attorney At Law

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Agenda

- CA Ed Code Jurisdiction
- Suspension Due Process
- CA Ed Code Section
- Student Speech
- Expulsion Recommendations
- Q & A

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POLL

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Mandatory Recommendation for Expulsion?

- A male student sexually assaults a female student on their way to school
- A student is found in possession of a loaded firearm 5 minutes afterschool, 2 blocks from the school
- At school, two students agree to fight afterschool at a park nearby. During the fight, one of the students brandishes a knife at the other student
- A student posts that he is going to blowup the school on social media

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Jurisdiction

- 48900 (s)?
- 48915 (a)?
- 48915 (c)?

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Suspension Days

- The Superintendent or designee may suspend any student:
 - up to **5** consecutive school days for a single incident of misconduct;
 - up to **20** school days, cumulatively, in a school year;
 - an additional **10** days for reassignment for purposes of adjustment.
- Note: Days on extended suspension pending expulsion do NOT count toward total days of suspension limit.

(Education Code 48911(a) & 48903)

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Other Means of Correction

- Including **supervised suspension**, shall be imposed only when **other means of correction** fail to bring about proper conduct.
- Suspension for 1st offense:
 - Violation of 48900(a), (b), (c), (d) or (e); or
 - Pupil's presence causes a continuing danger to persons.
 - Deletes – danger to property or threatens to disrupt the instructional process.

Education Code 48900.5(a)

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Other Means of Correction

- **Conference** between school personnel, parent/guardian, and the student
- **Referrals** to school counselor, psychologist, social worker, child welfare attendance personnel, or other school support service personnel for **case management and counseling**
- Study Teams, guidance teams, resource panel teams, or other **intervention-related teams** that assess the behavior, and develop and implement individualized plans to address the behavior in partnership with the student and his or her parents
- **Referral** for a comprehensive **psychosocial or psychoeducational assessment**, including for purposes of creating and IEP or a Section 504 Plan

Education Code 48900.5(b)

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Other Means of Correction

- Enrollment in a program for teaching **prosocial behavior or anger management**
- Participation in a **restorative justice** program
- A **positive support approach** with tiered intervention that occurs during the school day on campus
- **After-school programs** that address **specific behavioral issues** or expose students to **positive activities and behaviors**, including, but not limited to, those operated in collaboration with local parent and community groups
- Community service

Education Code 48900.5(b)

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Other Means of Correction

- AB 1165 - Education Code 48900.5(c):
- For a pupil who has been suspended, or for whom other means of correction have been implemented pursuant to subdivision (b), for an incident of **racist bullying, harassment, or intimidation**, local educational agencies are **encouraged to have both the victim and perpetrator engage in a restorative justice practice** that is found to suit the needs of both the victim and the perpetrator. Local educational agencies are **encouraged to regularly check on the victim of racist bullying, harassment, or intimidation to ensure that the victim is not in danger of suffering from long-lasting mental health issues**. Local educational agencies are **encouraged to require perpetrators to engage in culturally sensitive programs that promote racial justice and equity and combat racism and ignorance**.

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Other Means of Correction

- Legislative Intent – 48900(w)(2):
 - Multi-Tiered System of Supports
 - Restorative justice practices, trauma-informed practices, social and emotional learning, and schoolwide positive behavior interventions and support, may be used to help pupils **gain critical social and emotional skills**, receive **support to help transform trauma-related responses**, **understand the impact of their actions**, and **develop meaningful methods for repairing harm to the school community**.

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Teacher Class Referrals

- A teacher referral is when a teacher sends a student out of class for an intervention, with the expectation that the student will be allowed to return to class once the intervention has been completed. A student can receive a referral for any reason and at any time. A teacher referral is different than a teacher suspension, which can only occur for CA Ed. Code 48900 et. Seq. violations and must be documented on a Teacher Suspension form

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Teacher Class Suspensions

- Teachers may suspend a student from their class for any act listed in CA Ed. Code 48900, subject to the requirement of establishing that other means of correction have failed to bring about proper conduct, as stated in CA Ed. Code 48900.5, for the remainder of the class day and the next day.

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Teacher Class Suspensions

- Required Steps
 - The teacher **must** immediately report the suspension to the principal and send the student to the principal or designee for appropriate action.
 - As soon as possible, the teacher **must** ask the parent to attend a parent-teacher conference regarding the suspension.
 - If practicable, a school counselor or school psychologist *may* attend.
 - A school administrator **must** attend the conference if the teacher or parent so requests.
 - The student **shall not be returned to the class from which s/he was suspended, during the period of suspension**, without the agreement of the teacher of the class and the Principal.
 - A student suspended from a class **cannot** be placed in another regular class during the period of suspension. However, if the student has more than one class per day, the student will attend her/his other classes.
 - The teacher **may** refer the student to the Principal for consideration of a suspension from the school.
- (CA Ed. Code 48910)

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Due Process Conferences

- Suspension conference
 - Informal conference with Principal or designee, student, and, when practicable, referring staff;
 - Inform pupil of reason for disciplinary action and evidence against him/her, **including the other means of correction that were attempted prior to the suspension** (AB 667, Effective 1/1/18);
 - Give pupil opportunity to present his/her version and evidence;
 - Immediately contact parent in person or by telephone;
 - Send written notice home the same day.

Education Code 48911(b)

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Due Process Conferences

- Extension of Suspension conference
 - Must invite pupil and parent to a meeting;
 - Should be held during the 5 day suspension;
 - Determine that the presence of the pupil at school:
 - Causes a danger to persons or property
 - Causes a threat of disrupting the instructional process
 - Send Written notice of extension of suspension

Education Code 48911(g)

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Assault/Battery

- (a)(1) Caused, attempted to cause, or threatened to cause physical injury to another person.
 - Hit someone in the face – breaking nose
 - Hit someone in the face – no injury
 - “I’m going to kick your ass!”

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Battery

- (a)(2) Willfully used force or violence upon the person of another, except in self-defense.
 - Pushing/hitting someone
 - Shooting someone with a pellet gun
- *Note: Many acts that violate (a)(2) also violate (a)(1), in which case, both subsections should be charged.
- Self-defense –1. Reasonably believed that s/he was in imminent danger of suffering bodily injury; 2. Reasonably believed that the immediate use of force was necessary to defend against that danger; AND 3. S/he used no more force than was reasonably necessary to defend against that danger.

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Self Defense

- Self-defense Considerations
 - Belief in future harm is not sufficient
 - Were beliefs reasonable?
 - Circumstances and reasonable person
 - If the student's beliefs are reasonable, danger does not need to have actually existed
 - Belief based on false info ok, if actually and reasonably believed true
 - Past threat or harm
 - Justified in acting more quickly or taking greater measures
 - Not required to retreat. Entitled to stand ground and defend herself. This is so even if safety could have been achieved by retreating

Self Defense?



Self Defense?



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Disruption/Defiance

- (k) (1)
 - Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties.

- (k) (2)
 - Teachers can suspend from class for (k)
 - Students K to 8, shall not be suspended from school for (k)
 - Students K to 12, inclusive, shall not be recommended for expulsion for (k)

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Imitation Firearm

- (m) Possessed an imitation firearm. As used in this section “imitation firearm” means a replica of a firearm that is so substantially similar in physical properties to an existing firearm as to lead a reasonable person to conclude that the replica is a firearm.

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Sexual Battery/Sexual Assault

- (n) Committed or attempted to commit a sexual assault as defined in Section 261, 266c, 286, 287, 288, or 289 of, or former Section 288a of, the Penal Code or committed a sexual battery as defined in section 243.4 of the Penal Code.

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Sexual Battery

- PC 243.4 – Sexual battery
 - Touch intimate part (sexual organs, anus, groin, buttocks and breast of female), unlawfully restrained, against will, for sexual arousal, abuse or gratification.
 - Touch an intimate part of another person, against will, **specific** purpose of sexual arousal, sexual gratification, or sexual abuse

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Sexual Assault

- Rape – sexual intercourse
- Unlawful sexual intercourse, sexual penetration, oral copulation or sodomy by false or fraudulent representation (fear)
- Sodomy
- Lewd or lascivious acts (child under 14yrs)
- Oral Copulation
- Forcible Acts of sexual penetration

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Bullying

- Bullying – Ed. Code Section 48900(r)
 - **Severe or pervasive physical or verbal** act or conduct, including communications made in writing or by means of an electronic act, and including one or more of the following:
 - Sex Harassment (48900.2)
 - Hate Violence (48900.3)
 - Threats, harassment, intimidation (48900.4)
 - Has or reasonably predicted to have one or more of the following:
 - **Reasonable pupil** in fear of harm to person or property
 - **Reasonable pupil** to experience substantially detrimental effect to physical or mental health
 - **Reasonable pupil** to experience substantial interference with academic performance
 - **Reasonable pupil** to experience substantial interference with ability to participate in or benefit from services, activities, or privileges provided by the school

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Cyber-Bullying

- 48900(r)(2) (A)
 - “Electronic act” means either the creation **or** transmission **originated on or off the schoolsite**, by means of an electronic device, including, but not limited to, a telephone, wireless telephone, or other wireless communication device, computer, or pager, of a communication, including, but not limited to, any of the following:

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Sexual Harassment – 48900.2

- Unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature:
 - reasonable person same gender as victim (objective standard)
 - sufficiently severe or pervasive;
 - negative impact on academic performance **or**;
 - create an intimidating, hostile, or offensive educational environment
 - shall not apply to kindergarten and grades 1 to 3

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Harassment, Threats, Intimidation – 48900.4

Intentionally engaged in harassment, threats, or intimidation,

- directed against school district personnel or pupils,
- sufficiently severe or pervasive,
- has the actual (subjective) and reasonably expected effect
 - materially disrupting classwork;
 - creating substantial disorder; **and**
 - invading the rights of either school personnel or pupils by creating an intimidating or hostile educational environment.

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Hate Violence - 48900.3

- Caused, attempted to cause, threatened to cause, or participated in an act of **hate violence**.
 - Willfully injure, intimidate, interfere with, oppress, or threaten any other person
 - Deface, damage, or destroy the real or personal property
- Disability, **gender, gender identity, gender expression**, nationality, race or ethnicity, religion, **sexual orientation**, or association with a person or group with one or more of these actual or perceived characteristics.

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Scenario

- A parent reports to you that a student has posted two derogatory pictures targeting his Muslim child. One picture has the student's face imposed on a body holding machine guns and ammunition and the caption reads, "Al-Qaeda." The second picture has the student's face in between the "Twin Towers" and says "Lil' Bomber." The parent has provided a screenshot and it also shows that a number of your students have "liked" the post and made other derogatory comments about the student.
 - Does the school have jurisdiction to discipline any of the students involved?
 - Is this cyber-bullying? Explain your analysis.

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Student Speech

- Delicate balancing act – requires case-by-case analysis
 - Jurisdiction?
 - Violate other students' rights?
 - Harassment based on protected status?
 - Reasonable threat of violence
 - Cause substantial disruption at school?
 - Vulgar, lewd, or sexual in nature?
 - Advocate the use of illegal drugs?
 - Religious in nature?
 - Demonstration or protest?

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Expulsion Recommendations

- Discretionary recommendations
- Mandatory recommendations
- Stipulated expulsions

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Discretionary Recommendation for Expulsion

- Unless the principal, superintendent or designee determines that expulsion should not be recommended under the circumstances or that an alternative means of correction would address the conduct, the principal, Superintendent or designee shall recommend a student's expulsion found to have committed any of the following acts **at school or at a school activity off school grounds**:

Ed. Code, § 48915 (a)(1)

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Discretionary Recommendation for Expulsion

- (A) Causing **serious physical injury** to another person, except in self-defense.
- (B) **Possession** of any knife as defined in Education Code 48915 (g), or other dangerous object of no reasonable use to the student.

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Discretionary Recommendation for Expulsion

- (C) Unlawful **possession** of any controlled substance, except for
 - (i) The first offense for the possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis.
 - (i) **The possession of over-the-counter medication for use by the pupil for medical purposes or medication prescribed for the pupil by a physician.**

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Discretionary Recommendation for Expulsion

(D) Robbery or extortion.

(D) Assault or battery, as defined in Penal Code 240 and 242, upon **any school employee**.

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Discretionary Recommendation for Expulsion

- In addition to finding that the student committed an act listed above or in subdivision (a), (b), (c), (d), or (e) of section 48900, the principal or Superintendent must also establish either or both of the following:
 - That **other means of correction** are not feasible or have repeatedly failed to bring about proper conduct.
 - That **due to the nature** of the violation, the presence of the student causes a continuing danger to the physical safety of the student or others. (Ed. Code, § 48915, subd. (b) and (e).)

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Due to The Nature of the Act

- Potential for injury
- Immediate danger
- Severity of the act
- Impact on student body

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Mandatory Recommendation for Expulsion

- The principal, superintendent or designee shall immediately suspend and recommend for expulsion any student found to have committed any of the following acts **at** school or **at** a school activity off school grounds:

Ed. Code, § 48915, subd. (c)

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Mandatory Recommendation for Expulsion

- Possessing, as verified by a district employee, or selling or otherwise furnishing a firearm, unless the student had obtained prior written permission to possess the item from a certificated school employee, with the principal or designee's concurrence.
- The act of possessing an imitation firearm, is not an offense for which suspension or expulsion is mandatory

Education Code 48915(c)(1)

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Mandatory Recommendation for Expulsion

- Brandishing a knife, as defined in Education Code 48915(g), at another person.

Brandish – to waive or flourish menacingly. To display ostentatiously. (The American Heritage Dictionary, 4th Edition, 2001.)

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Mandatory Recommendation for Expulsion

- Unlawfully **selling** a controlled substance listed in Health and Safety Code 11053-11058.
- Committing or attempting to commit a sexual assault as defined in subdivision (n) of Section 48900 or committing a sexual battery as defined in subdivision (n) of Section 48900.

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Mandatory Recommendation for Expulsion

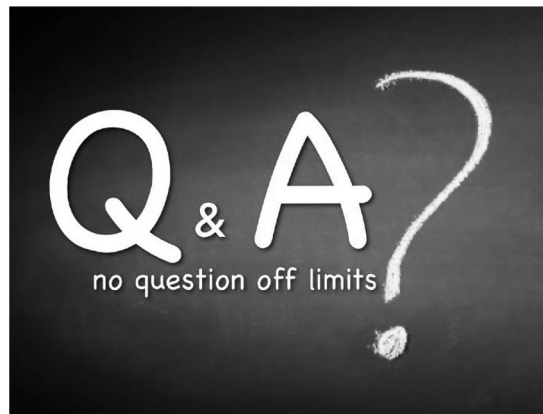
- Possession of an explosive as defined in 18 U.S.C. 921
 - Pursuant to 18 U.S.C. 921, an explosive means destructive device and includes, but is not limited to, any explosive, incendiary, or poison gas
 - Bomb,
 - Grenade,
 - Rocket having a propellant charge of more than four ounces,
 - Missile having an explosive or incendiary charge of more than one-quarter ounce,
 - Mine, or
 - similar device.

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Stipulated Recommendation for Expulsion

- No statutory authority for stipulated expulsions.
- Choplin v. Conejo Valley Unified School District, 903 F.Supp. 1377 (C.D. CA 1995) upheld the validity of stipulated expulsions.
 - A person may waive a constitutional right if it can be established by clear and convincing evidence that the waiver is voluntary, knowing and intelligent. p. 1383-1384.
 - Parents may waive the right to a pre-expulsion hearing and consent to the discipline. p. 1385.

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Thank you!

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