January 21, 2015

Max McGee, Superintendent
Palo Alto Unified School District
25 Churchill Ave.
Palo Alto, CA  94306

Re: Public Records Act Request

Dear Max:

As the one-year mark approaches since the adoption of the district’s unique two-tier bullying policy, the Palo Alto Weekly is looking to analyze the data that was to have been collected under the new policies and explore how the implementation has worked.

Given that we have experienced great difficulty, delay and in some cases non-responsiveness in obtaining information on this subject in the past through informal requests, we thought it best to make this more formal written request. In light of Charles Young’s ongoing work in this area, his verbal report on January 13 to the Board of Education, and the agenda item on this topic planned for next week, we assume that the information responsive to this request should be readily available (and perhaps a part of next week’s presentation.)

Therefore this letter constitutes our request under the California Public Records Act for copies of the following documents:

1. Copies of all PAUSD Incident Reporting Forms (known as “Form A”) alleging bullying or harassment for the time period of January 2014 through today’s date.

2. All documentation of bullying complaints (made verbally or in writing) maintained by each site and passed on to the Coordinator of Student Services, as required by AR 5131.2 (at p. 4, sec. B), for the time period of August 2014 through today’s date.

3. Records of actions taken by the district in response to each complaint under the Uniform Complaint Procedure, as required by AR 1312.3 (which states, at the top of page 4, under “Recordkeeping,” that in addition to the UCP log required: “The District Compliance Officer shall also maintain a record of actions taken by the District in response to each complaint”), for the time period of March 2014 through today’s date.

4. Data from Infinite Campus showing the number of reports of bullying, harassment or sexual harassment incidents, including name of school, student grade, date of report, type of bullying/harassment, and resolution, from Jan. 2013 though today’s date. (See attached 27-page spreadsheet prepared by Michael Milliken for responses to our past request for this information, covering 2010-11, 2011-12 and 2012-13.)
5. Written materials prepared by the district (or its attorneys or contractors) for training and/or guidance of site administrators regarding:

- requirements of the Uniform Complaint Procedure (BP/AR 1312.3)
- how to handle non-protected status bullying reports or complaints under BP/AR 5131.2
- how to conduct investigations of incidents, reports or complaints involving alleged bullying or harassment

This request is intended to include visual presentation materials, flow charts, memoranda, emails or protocols provided to site administrators regarding the above for general training or guidance purposes. This request covers the time period from May 2014 through today’s date.

6. Documentation of complaints of alleged discriminatory harassment or bullying handled through a site-level informal resolution process, with parent consent, as permitted under the Uniform Complaint Procedure (see p. 5-7, Sect. D), for the time period of March 2014 through today’s date.

This request includes written notifications to the District Compliance Officer about the outcome of any informal process, as required under AR 1312.3 (which states, at p. 7: “At the conclusion of 10 days, the principal/designee will document whether informal resolution has been successful...and will notify the District Compliance Officer in writing of the outcome.”)

Since this request pertains entirely to documents that were either required to be created under District policy or that were created to effectuate training and guidance of school personnel, we assume it should not be time-consuming or burdensome to fulfill. Should that not be the case, or if we can clarify any aspect of the request, please let us know.

Thank you for your assistance.

Sincerely,

Elena Kadvany
Staff Writer

Terri Lobdell
Contributing Writer
February 4, 2015

Via Electronic Mail

Elena Kadvany, Staff Writer
Terri Lobdell, Contributing Writer
Embarcadero Media
450 Cambridge Ave.
Palo Alto, CA 94306

Re: Response to Public Records Act Request of January 21, 2015

Dear Ms. Kadvany and Ms. Lobdell:

The Palo Alto Unified School District (District) received your written request of January 21, 2015, for information under the California Public Records Act (CPRA; Gov. Code, §§ 6250 et seq.). The District reviewed whether the District has records responsive to the items of your request and responds on each item below. As the information requested includes confidential information on incidents of alleged bullying and student and parent privacy interests, the District consulted with legal counsel regarding the request and asked for our assistance in preparing this response. Thank you for your patience in awaiting this initial response.

An approximate date is provided below for each item when responsive, non-exempt records will be made available in order to allow for necessary gathering, review and redaction of the records.

Item One

The District has District Incident Reporting Forms alleging bullying or harassment from January 2014 through January 21, 2015. These forms are filled with identifying information about individual students and are exempt from disclosure under the CPRA. (Gov. Code, § 6254, subd. (k); Ed. Code, § 49060.) The Family Educational Rights and Privacy Act (FERPA) and the Education Code prohibit the District from releasing student records without parent consent, except under specified statutory exceptions. (20 U.S.C. § 1232g(a)(4)(A); 34 C.F.R. § 99.31; Ed. Code, § 49061, subd. (b), 49076.) There is no statutory exception that applies to your request. FERPA and Education Code provisions protecting parent and student privacy expressly prevail over the CPRA. (Ed. Code, §49060, Gov. Code, § 6254, subd. (k).) In Rim of the World Unified School District v. Superior Court, the California court found similar records of student
discipline exempt from disclosure and found redaction of such records would not be sufficient to protect student and parent privacy interests. (2002) 104 Cal.App.4th 1393.) Potential redaction of student information to allow release of information is an option for a school district to consider in its discretion, taking account of various factors. (34 C.F.R. § 99.31(b-d); Ed. Code, § 49076.) The District finds the Incident Reporting Forms exempt from disclosure and potential redaction of information from the heavily factual and student-specific forms would not be sufficient to protect student and parent privacy interests and allow for public disclosure.

Item Two

The District has documentation of bullying complaints maintained by each site. Certain of these records are filled with identifying information about individual students, exempt from disclosure, and redaction would be insufficient to protect student and parent privacy interests and allow for public disclosure as described above. The District has a record maintained by the Coordinator of Student Services on bullying complaints at each site for the requested time period of March 2014 through January 21, 2015. This record requires review and heavy redaction in order to remove potentially identifying information, protect student and parent privacy interests, and allow for public disclosure. The District will proceed to review and redact this record and anticipates having it available for release to you on February 27, 2014.

Item Three

The District has records of actions taken by the District in response to each complaint under the Uniform Complaint Procedure for the requested time period of March 2014 through January 21, 2015. Certain of these records are filled with identifying information about individual students, exempt from disclosure, and redaction would be insufficient to protect student and parent privacy interests and allow for public disclosure as described above. The District has a record maintained by the District's Compliance Officer on the District's responsive actions to each complaint under the UCP. This record requires review and redaction in order to remove potentially identifying information, protect student and parent privacy interests, and allow for public disclosure. The District will proceed to review and redact this record and anticipates having it available for release to you on February 27, 2014.

1 In this decision, the California court found that federal law protecting student privacy [FERPA] preempted a California Education Code provision mandating disclosure of expulsion records and the court invalidated the provision as it conflicted with federal law and was a direct obstacle to Congress's purposes to protect parent and student rights to privacy through FERPA.
Item Four

The District can generate a new report of data available on Infinite Campus for the period of January 2013 through January 21, 2015, similar to what was provided with your request. This will be preparation of a new report of data on Infinite Campus based on applicable search terms. The District is willing to create a new report for the requested time period given the past report of this data. As you know, consistent with the new District policies adopted last year, and other items described in your request, the District has developed new forms for recordkeeping in the specific subject area.

Preparation of a new report from Infinite Campus for release will require review and redaction in order to remove potentially identifying information, protect student and parent privacy interests, and allow for public disclosure. The District will proceed to generate, review, and redact this record and anticipates having it available for release to you on February 27, 2014.

Item Five

The District has training and guidance materials for site administrators from May 2014 through January 21, 2015, on UCP requirements, handling non-protected status bullying reports/complaints under BP/AR 5131.2, and conducting investigations involving alleged bullying or harassment. The District anticipates having these materials available for release to you on February 12, 2014.

Item Six

The District has records on complaints of alleged discriminatory harassment or bullying handled through site-level informal resolution processes as permitted under the UCP from March 2014 through January 21, 2015, including notifications to the District's Compliance Officer of outcomes. Certain of these records are filled with identifying information about individual students, exempt from disclosure, and redaction would be insufficient to protect student and parent privacy interests and allow for public disclosure as described above. Other of these records will require review and redaction in order to remove potentially identifying information, protect student and parent privacy interests, and allow for public disclosure. The District will proceed to review and redact these records and anticipates having them available for release to you on February 27, 2014.
The District or our office will provide the records to you directly in an electronic PDF format when they are available for release. Thank you for your consideration.

Sincerely,

FAGEN FRIEDMAN & FULFROST, LLP

Chad J. Graff

cc: Dr. Max McGee, Superintendent
    Dr. Charles Young, Associate Superintendent
    Brenda Carrillo, Coordinator of Student Services
Dear Terri,

It was nice to see you at the community event on Wednesday. Attached please find requested district discipline data showing number of reports of bullying, harassment or sexual harassment (Item 4).

Please let me know if you should have any questions.

Be well,

Brenda Carrillo
Student Services Coordinator
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2013-14 Jordan Middle School 6 513 Bullying
2013-14 Terman Middle School 7 513 Bullying Detention
2013-14 Jordan Middle School 7 513 Bullying Saturday School
2013-14 Jordan Middle School 7 513 Bullying Detention
2013-14 Jane L Stanford Middle School 8 403 Sexual Harrassment Suspension
2013-14 Jordan Middle School 8 403 Sexual Harrassment Suspension
2013-14 Jordan Middle School 8 403 Sexual Harrassment Suspension
2013-14 Jordan Middle School 8 403 Sexual Harrassment Suspension
2013-14 Terman Middle School 8 403 Sexual Harrassment Behavior Contract
2013-14 Terman Middle School 8 403 Sexual Harrassment In-School Suspension
2013-14 Terman Middle School 8 403 Sexual Harrassment Warning
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<td>Harassment, Intimidation of a Witness</td>
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<td>Behavior Contract</td>
</tr>
</tbody>
</table>
Hi Brenda -- I hope your week is going well.

I wanted to follow up to find out when we might expect to get a response to Request #6 on the Weekly’s January 21, 2015 PRA Request?

That specific item relates to documentation of complaints handled through the informal site-level resolution process under AR 1312.3, and includes written notifications to the District Compliance Officer about the outcome of any informal process, as required by AR 1312.3.

Chad’s written response (dated Feb. 4) indicated that there would be documents (with some redactions) responsive to this item available for release on Feb. 27, 2014, but we haven’t received any documents yet that appear to be responsive to this request.

I would appreciate your letting us know about the status of this outstanding request when you have a moment.

Thanks very much for your help, Terri

Hello Terri,

When we initially reviewed the request, we anticipated there would be disclosable documents, but further review indicated there were none. When the informal resolution process has been offered as part of the UCP, the parties have chosen to proceed with a full investigation.

Please let me know if you have any further questions. Have a great weekend!

Sincerely,

Charles F. Young, Ed.D.
Associate Superintendent-Educational Services
Palo Alto Unified School District
650-329-3709
Hi Terri and Elena,

Attached is the Log of Uniform Complaints with Records of Actions Taken, Item Three in the Public Records Act Request for March 2014-January 21, 2015. Please let me know if you have any questions.

Have a good weekend,
Linda

Linda Dillon
Secretary to Charles Young, Associate Superintendent
Educational Services
Palo Alto Unified School District
<table>
<thead>
<tr>
<th>Date Filed</th>
<th>UCP #</th>
<th>Complaint</th>
<th>Actions Taken by the District / Disposition of Complaint</th>
</tr>
</thead>
<tbody>
<tr>
<td>4/1/14</td>
<td>2013-14.11</td>
<td>Sexual harassment and bullying (Gunn)</td>
<td>Concluded that there may have been harassment or bullying on the part of either Mr. Almasi or other students toward [REDACTED]. Investigation did not reveal that District employees were or should have been aware of this behavior. Investigation into the District’s actions subsequent to the filing of [REDACTED] Complaint revealed that the District has acted in accordance with state and federal law in its response to [REDACTED] Complaint. The District will continue to take both proactive and responsive measures to address any potential or ongoing harassment or bullying against [REDACTED] or any other student. To promote social-emotional health and take proactive and remedial steps to address and prevent sexual harassment and related bullying at school, the District has instituted a number of policies, trainings, and proactive steps, at District, school, and classroom levels.</td>
</tr>
<tr>
<td>5/13/14</td>
<td>2013-14.12</td>
<td>Fees charged for Middle School afterschool sports per AB1575 (District)</td>
<td>No corrective actions warranted – MS Sports is run by City of PA, not school district</td>
</tr>
<tr>
<td>9/5/14</td>
<td>2014-15.13</td>
<td>Discrimination based on race (Jordan)</td>
<td>Investigation completed by Dora Dome, Esq. Remedies Requested – denied. Recommended that District continually examine practices to ensure staff, students, parents are supported / educated on issues facing diverse school communities Jordan can send a clear message to student and parent community it welcomes and values all of its students. [REDACTED] experienced some individuals who do not share these values during [REDACTED] time at Jordan. Jordan staff, with one exception, appropriately addressed the issues that they were aware of. [REDACTED] could have been handled in a way that followed a racially neutral investigative protocol.</td>
</tr>
<tr>
<td>Date</td>
<td>Year</td>
<td>Issue</td>
<td>Action/Results</td>
</tr>
<tr>
<td>----------</td>
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<td>----------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>8/29/14</td>
<td>2014-15.14</td>
<td>Sexual discrimination and harassment (Gunn) – freak dancing at school dances</td>
<td>Freak dancing will not be allowed at school dances. Principal worked with Administrative Team to increase vigilance and supervision by chaperones. Principal talked to student government and wrote in parent newsletter about appropriate student behavior and dress at dances.</td>
</tr>
<tr>
<td>12/9/14</td>
<td>2014-15.15</td>
<td>Breach of FERPA and Code of Ethics (JLS)</td>
<td>No corrective actions warranted - all requests for remedies denied. Based on investigation, evidence does not support a finding that engaged in any violation of FERPA or a code of ethics. No allegations were corroborated and there is no evidence that mistreated, mis-graded, or engaged in any act in violation of FERPA or a code of ethics.</td>
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<tr>
<td>12/15/14</td>
<td>2014-15.16</td>
<td>Non-compliance with PE time requirements for grades 1-6</td>
<td>Results of investigation confirm District is in compliance with requirements of Education Code section 51210(g). If any past isolated practices conflicted with established policies or supplementary steps, District will reiterate to all staff and administrators the expectations on issue to ensure compliance.</td>
</tr>
</tbody>
</table>
Hi Terri,
Attached is the Log of Uniform Complaints, as of today.
Have a good weekend,
Linda

Linda Dillon
Secretary to Charles Young, Associate Superintendent
Educational Services
Palo Alto Unified School District
650-329-3709, Fax 650-326-7463
<table>
<thead>
<tr>
<th>School Year</th>
<th>Date Filed</th>
<th>UCP #</th>
<th>Complaint</th>
<th>Resolution</th>
<th>Compliance Officer</th>
<th>Notification Date</th>
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<tbody>
<tr>
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<td>9/27/06</td>
<td>2006-07-1</td>
<td>Air conditioning/heating problem (Gunn)</td>
<td>Heat corrected, fans installed</td>
<td>Marilyn Cook</td>
<td>10/10/06</td>
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<tr>
<td>2006-07</td>
<td>1/10/07</td>
<td>2006-07-2</td>
<td>Condition of restroom (Gunn) – discrimination on basis of disability</td>
<td>Conditions corrected</td>
<td>Marilyn Cook</td>
<td>1/30/07</td>
</tr>
<tr>
<td>2012-13</td>
<td>9/21/12</td>
<td>2012-13-3</td>
<td>Girls’ swimming PE requirements – discrimination on basis of sex (Paly)</td>
<td>PE policy modified</td>
<td>Charles Young</td>
<td>10/18/12</td>
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<tr>
<td>2012-13</td>
<td>7/3/13</td>
<td>2012-13.6</td>
<td>Request for refund of all money paid to PAUSD from 2004-present (District)</td>
<td>No basis for refunds - Decision challenged; Board hearing requested 8/28/13 - Board voted not to hear complaint 9/6/13; original decision stands</td>
<td>Charles Young</td>
<td>Letter sent (reg/cert) 8/9/13; resent (reg/cert) 8/20/13 Email and letter sent 9/6/13</td>
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<tr>
<td>Date</td>
<td>Type</td>
<td>Description</td>
<td>Action</td>
<td>Subject</td>
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<tr>
<td>6/17/13</td>
<td>2012-13.7</td>
<td>Request for refund of 2011-13 summer school fees (District)</td>
<td>Fees from 2013 refunded</td>
<td>Charles Young</td>
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<td>7/25/13</td>
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<td>Letter sent by email 7/25/13</td>
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<td>10/24/13</td>
<td>2013-14.8</td>
<td>Grade Dispute – discrimination on basis of mental disability (Paly)</td>
<td>No corrective actions warranted</td>
<td>Charles Young</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>- Decision challenged; Board hearing requested 11/26/13</td>
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<td>- Board voted not to hear complaint 10/10/13; original decision stands</td>
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<tr>
<td>11/23/13</td>
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<td>Letter sent by mail 11/23/13</td>
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<td>Letter sent (reg/cert) 12/11/13</td>
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<td>12/3/13</td>
<td>2013-14.9</td>
<td>Bullying of protected class student (Jordan)</td>
<td>No corrective actions warranted - not disability-based harassment</td>
<td>Charles Young</td>
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<td>2/21/14</td>
<td>2013-14.10</td>
<td>Discrimination against protected class student (Barron Park)</td>
<td>No corrective actions warranted – no discrimination against protected class student</td>
<td>Charles Young</td>
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<tr>
<td>4/1/14</td>
<td>2013-14.11</td>
<td>Sexual harassment and bullying (Gunn)</td>
<td>No corrective actions warranted – District acted in accordance with State and Federal law in response to complaint</td>
<td>Charles Young</td>
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<td>Anonymous complaint – investigation complete/file closed</td>
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<tr>
<td>Date</td>
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<td>Description</td>
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<td>Investigator</td>
<td>Date of Resolution</td>
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<td>2014-15</td>
<td>9/5/14</td>
<td>2014-15.13 Discrimination based on race (Jordan)</td>
<td>Remedies Requested – denied. Recommended that District continually examine practices to ensure staff, students, parents are supported / educated on issues facing diverse school communities</td>
<td>Charles Young / Investigation by Dora Dome</td>
<td>11/25/14</td>
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</tr>
<tr>
<td>2014-15</td>
<td>8/29/14</td>
<td>2014-15.14 Sexual discrimination and harassment (Gunn)</td>
<td>Inappropriate dancing will not be allowed</td>
<td>Charles Young</td>
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<tr>
<td>2014-15</td>
<td>12/15/14</td>
<td>2014-15.16 Non-compliance with PE time requirements for grades 1-6</td>
<td>No corrective actions warranted – District in compliance with Ed Code #51210 (g)</td>
<td>Charles Young</td>
<td>2/10/15</td>
<td></td>
</tr>
</tbody>
</table>
Dear Elena and Terri,

Good afternoon. Attached please find items as per your public records request, dated Jan. 21, 2015. Training provided to administrators is included as is documentation of bullying reports. We were able to secure these documents earlier than expected and thus are sending to you a bit ahead of time. We are still working on the discipline data.

Be well,

Brenda Carrillo  
Student Services Coordinator
<table>
<thead>
<tr>
<th>Date of Report</th>
<th>Name(s) of alleged target(s) of bullying / Age / Grade</th>
<th>Name(s) of alleged aggressor(s) / Grade</th>
<th>School</th>
<th>Name(s) of witness(es)</th>
<th>When did the incident(s) occur?</th>
<th>where did incident occur?</th>
<th>Give a brief description of the incident(s) and/or concerns</th>
<th>Did a physical injury result?</th>
<th>Do you know of other incidents of bullying directed at this student?</th>
<th>Name of person reporting incident(s)</th>
<th>Relationship to Student</th>
<th>Bullying Allegations: Substantiated / Not Substantiated / Referred to UCP</th>
</tr>
</thead>
<tbody>
<tr>
<td>10/3/2021</td>
<td>Gunn 0</td>
<td></td>
<td>Gunn</td>
<td>8</td>
<td>10/20/2021</td>
<td>Bike area 1 2 times per day</td>
<td>see forms</td>
<td>no</td>
<td>yes</td>
<td>Deanna Mistele / Heather Cary Wheeler</td>
<td>Coworker / Advisor</td>
<td>Substantiated / Referred to UCP</td>
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<tr>
<td>11/6/2021</td>
<td>JLS 0</td>
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<td>JLS</td>
<td>0</td>
<td>10/20/2021</td>
<td>on campus</td>
<td>Client was at JLS</td>
<td>no</td>
<td>yes</td>
<td>Deanna Mistele / Heather Cary Wheeler</td>
<td>Coworker / Advisor</td>
<td>Not Referred to UCP</td>
</tr>
<tr>
<td>10/30/2021</td>
<td>JLS 0</td>
<td></td>
<td>JLS</td>
<td>0</td>
<td>10/30/2021</td>
<td>Lunch area / Classroom</td>
<td>see forms</td>
<td>no</td>
<td>yes</td>
<td>Deanna Mistele / Heather Cary Wheeler</td>
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Trainings on Anti-Bullying and Uniform Complaint Procedure

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<td>Investigations: Understanding Due Process and Protecting the Right of all Students</td>
<td>May 13, 2014 8:15am-12pm</td>
<td>Dora J. Dome, Esq.</td>
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<td>2014 Site Administrator Survival Guide</td>
<td>September 25, 2014</td>
<td>Sarah Levitan Kaatz</td>
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<td>Proactive Discipline &amp; School Safety</td>
<td>January 22, 2015</td>
<td>Brenda Carrillo</td>
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Proactive Discipline & School Safety

Presented by: Brenda Carrillo, Student Services Coordinator
Date: January 22, 2015
Proactive Discipline

Proactive interventions can decrease problematic behaviors by reinforcing desired behaviors.
Proactive Measures

- Review school discipline/safety data
- Have clear and consistent school rules
- Create common language across campus
- Develop school-wide tiered interventions
- Use interventions early and often
- Train for strong classroom management skills
- Review Ed. Code and district policies yearly
Wise Practices-B.A.T.S.

- **Base** your decisions in Education Code and PAUSD policies
- **Assess** the situation by: Review student records/files/incidents/observations/etc.
- **Take** notes and document interventions, interviews and evidence
- **Share** results of your investigation with parents and the district office
A staff person tells you that last week she overheard several students calling Joey dumb on the playground. Joey is a third grader who had a stroke last year and received special services for a short time, but is now in regular education programs with no accommodations.

In making your decision, what..... Policies would you consult? Information do you need? Actions would you take?
Scenario 2

A parent contacts you to share that her fourth grade child is being bullied. She shares that her child had their jacket stolen, has been called racially demeaning names, and had a racial slur written on their locker.

In making your decision, what.....
Policies would you consult?
Information do you need?
Actions would you take?
Scenario 3

You are walking across campus and see a fifth grade student sitting outside of a classroom, unsupervised. You talk with the student who tells you that the teacher sends them out frequently when they do not “behave” or fail to turn in their homework. You speak to the teacher and she tells you that she considers her actions to be appropriate when students do not follow her rules.

What ……
Policies would you consult?
Information do you need?
Actions would you take?
Key Ideas: Discrimination

- Any staff who observe or receive a report of alleged discrimination, harassment, intimidation or bullying must report it to the site administrator or designee within 1 day;
- Students with disabilities, perceived disabilities, or who have a relationship or are associated with a person with disabilities, can be harassed and covered under antidiscrimination/harassment Board policy.
Key Ideas: Bullying

- If bullying implicates a protected class or status, must utilize the UCP and forward to the compliance officer within 2 days.
- If non-protected status, utilize site level procedures and investigate/resolve within 15 school days.
- Students who are bullied or bully others may be referred to counseling services (Ed. Code 48900.9).
If a student has an IEP, 504, is a foster youth or McKinney Vento-consider what other steps you may need to take.

Grades K-3 suspensions for violations of Ed. Code 48900 (k) are prohibited.

Recommendations for expulsions for all grade levels for violation of Ed. Code 48900 (k) are prohibited.
INVESTIGATIONS:
UNDERSTANDING DUE PROCESS 
AND PROTECTING THE RIGHTS 
OF ALL STUDENTS

May 13, 2014
8:15AM – 12:00 PM

PALO ALTO UNIFIED
SCHOOL DISTRICT
Palo Alto, CA

Presented by:
Dora J. Dome, Esq.
Dora J. Dome Biography

Dora J. Dome has practiced Education Law for over 17 years, primarily in the areas of student issues and special education. She currently provides legal representation to school districts on student issues, and has renewed her emphasis on developing and conducting professional development trainings for district staff that focus on Bullying, Equity and Legal Compliance in a proactive effort to build staff capacity to address the changing needs of their students.

Ms. Dome’s work with Bullying focuses on helping school districts create the necessary infrastructure to identify and address bullying in schools and to provide staff with effective strategies to respond to various forms of bullying and harassment. Her Equity trainings examine diversity and equity issues facing school districts such as examining stereotypes that impact attitudes and behavior of staff and students, identifying the harmful effects of stereotypes within the school setting, and coaching staff to develop skills to identify, interrupt and prevent discriminatory behavior. Ms. Dome’s legal compliance trainings provide up-to-date information and guidance on how to ’stay legal’ in the areas of special education, student discipline and Section 504.

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, No Child Left Behind, 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 also 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.” She graduated from University of Hawaii, Richardson School of Law (J.D.) and from University of California, Los Angeles (B.A.).

Ms. Dome is an Adjunct Professor at Mills College and a Lecturer at the University of California at Berkeley, teaching Education Law and Policy in the administrative credential programs for soon to be administrators.
INVESTIGATIONS:
UNDERSTANDING DUE PROCESS
AND PROTECTING THE RIGHTS
OF ALL STUDENTS

May 13, 2014
8:15AM – 12:00 PM

PALO ALTO UNIFIED SCHOOL DISTRICT
Palo Alto, CA

Presented by:
Dora J. Dome, Esq.

Investigations: Objectives

- **Disciplinary**
  - Identify witnesses
  - Obtain physical evidence, if applicable
  - Determine appropriate disciplinary action

- **Protecting the Target/Remedy Impact**
  - Determine whether interim measures are necessary to support the targeted individual(s)
  - Determine remedial actions, if appropriate
Investigation

- Obtain written statements from all percipient witnesses (including staff)
  - Percipient – firsthand knowledge
  - Use proper forms
  - Include all versions of statement
- Make sure statements are signed and dated by the witnesses
- Ask accused if there are witnesses he/she believes should be interviewed…Interview them!

Investigation

- Obtain sworn declarations when there is an unreasonable risk of psychological or physical harm
  - Declaration must include supporting details
  - Should be a separate document from incident report
- Sworn Declaration – Exception to Hearsay
  - Only as good as underlying statement
- Admission of Sworn Declaration
- Panel MUST make findings!

Investigation

- Obtain the actual or copies of the Physical Evidence immediately!
  - Drugs – Marijuana? Ecstasy? Alcohol? Etc.?
  - Photos – Injuries, drugs, weapons…
  - Surveillance tapes?
  - Medical Records? Is injury an element to be proved?
Investigation

- Who is in possession of the physical evidence?
  - Police? Parents? Hospital? IT?
- Do you need a Police Officer to authenticate?
  - YES! For firearms and drugs
- Issue subpoena for personal appearance? Production of evidence?

Notice of Hearing Requirements

- Expulsion Hearing is to be held within 30 schooldays after the date that the principal or the superintendent determines that the student has committed any act in violation of § 48900.
- Notice of hearing must be provided to family at least 10 days prior to the hearing. (Ed. Code § 48918)
- Expulsion packet should be completely assembled 10 days prior to the hearing. (Do not wait until the last minute to prepare your packet!)

The Expulsion Packet

- Notice of Suspension
- Principal’s Recommendation for Expulsion
- Notice of Meeting to Consider Extension of Suspension
- Notice of Extension of Suspension
The Expulsion Packet

- Charge letter with hearing date (notice)
- Incident reports/witness statements (redacted)
- Physical evidence (weapon, drugs, photos, etc.)
- Interventions and discipline tracker
- Teacher reports/ transcripts/attendance
- Any other relevant documents (e.g. continuance request, police report, etc.)

The Expulsion Hearing

- Copies of all evidence to be introduced MUST be provided to panel, witness, student and representative.
- Have you arranged for necessary witnesses to attend?
- Have you drafted:
  - Opening statement (roadmap for Panel);
  - Direct examination questions for your witnesses;
  - Cross examination for known Student witnesses;
  - Closing argument (incorporate presented evidence).

Evidentiary Issues

- Witness Testimony
  - Foundation (e.g. occupation, work experience, duties, grade, etc.).
  - Only testify based on personal knowledge.
  - Oral testimony required for verbal admission.
  - Authenticate their statements.
  - Be clear about which aspect of your case each witnesses testimony goes to.
  - Specifically direct the witness (an the panel) to the exhibits relevant to their testimony.
  - Do NOT have witnesses read their statements.
Evidentiary Issues

Introducing Evidence
- ALL documentary evidence in expulsion packet is Hearsay!
  • Exception – Written admission to charged conduct by accused.
- Hearsay – A statement (or evidence) entered for its truth by someone other than the declarant
- A recommendation to expel cannot be based solely on Hearsay evidence!

Evidentiary Issues

Introducing Evidence
- Do you have the physical evidence in the packet?
  • Drugs, Firearms, Medical records, Surveillance tapes, etc
- Do you need an "Expert" to authenticate evidence? (drugs, firearms, etc.)
- Have you established how the weapon meets the definition of a knife?
- Do you have the equipment you need to introduce the evidence at hearing?
  • DVD player, tape recorder, CD player, etc.

The Administrative Panel

Fact finders ONLY!
- Is there substantial evidence that the accused student engaged in the conduct for which (s)he was charged?
- What facts were presented at the hearing that prove that the accused committed the acts charged?
The Administrative Panel

- Findings of fact should clearly indicate:
  - Facts relied on to support each offense and the secondary findings.
  - Conclusions regarding whether the violation occurred.
  - Recommendation to the Board:
    • Expulsion; or
    • Expulsion with recommendation to suspend the enforcement of the expulsion order, if applicable. (Must include relevant mitigating facts)

Investigations: UCP

- Complaints Process
  - Initiation of Investigation – within 5 days (10 days if extended for informal resolution)
  - Initial Interview with Subject of Complaint
    • Describe procedures
    • Discuss remedies/actions requested
  - Investigation Process
    • Interview relevant witnesses/complainant/accused
    • Review records, notes, etc
  - Written report – within 60 calendar days of receipt of complaint

Investigations

Protecting the Target/Remedy Impact
Interim Measures

- Placing students in separate classes
- Transferring the accused to a different teacher
- Transferring the accused to a different school, as allowed by law
- Increase supervision of target

Remedial Action

- Interventions for the accused
- Interventions for the subject of the complaint
- Separating the subject and the accused (can’t penalize the subject)
- Follow-up inquiries with the subject of the complaint and witnesses to ensure harassment has stopped and no retaliation
- Training and/or interventions to larger school community

Q&A?

no question off limits
THANK YOU!

Dora Dome Law

610 16th Street, Suite 305
Oakland, California 94612

510.464.DOME (3663) office
510.301.6667 cellular
510.291.9599 fax
ddome@doradomelaw.com e-mail
www.doradomelaw.com web
SUSD

ADMINISTRATIVE EXPULSION HEARING

OCTOBER 26, 2012

In the matter of:

JACOB DOE

Case No. 2012-10-05668
INDEX OF ATTACHMENTS INCLUDED IN THE RECOMMENDATION FOR EXPULSION OF

RE: JACOB DOE

CASE NO. 2012-10-05668

BEFORE THE ADMINISTRATIVE PANEL

OCTOBER 26, 2012

6:00 PM

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<td>Notice of Extension of Suspension</td>
<td>4-5</td>
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<td>Notice of Suspension</td>
<td>6-8</td>
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<td>Principal's Recommendation for Expulsion</td>
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<td>Student Statement Form</td>
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<td>Teacher Referral</td>
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<td>Summary of Attendance</td>
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Notice of Expulsion and Hearing Charges
SUNSHINE UNIFIED SCHOOL DISTRICT
1234 Main Street, Sunshine, CA 99999 (415) 222-5679

NOTICE OF EXPULSION HEARING AND CHARGES
AGAINST Jacob Doe, BD: 04/19/1999
PURSUANT TO THE EDUCATION CODE
SECTION 48900(b), 48915(a)(2) ET SEQ.
10/15/2012

The principal of Sunshine Middle School has recommended the expulsion of your son, Jacob Doe, as a result of the following allegation:

On Thursday, October 1, 2012, at approximately 11:00 am, Sunshine Middle School French Teacher, Lindsey Tucker, reported to the Sunshine Middle School administration that Sunshine Middle School 8th grade student Jacob Doe was in possession of a knife in class. Ms. Tucker immediately seized the knife from Jacob, and gave it to the administration. The weapon Jacob possessed in the classroom was a two and a half inch locking blade knife. Jacob interviewed by the administration.

Jacob admitted to the SMS administration that he brought the knife to school for self-defense purposes. When asked if anyone at school was harassing or threatening him, Jacob stated no one was harassing or threatening him, Jacob didn't explain or give a reason why he brought the knife for self-defense reasons. Jacob admitted that he has brought the knife to school every day for approximately on week. Jacob wouldn't specially explain how he acquired the knife, or who gave it to him. Jacob stated that he knew it was wrong to bring the knife to school.

Based upon this misconduct, the SUNSHINE UNIFIED SCHOOL DISTRICT hereby charges that Jacob Doe has violated Education Code Sections 48900(b), 48915(a)(2).

- 48900(b) Possessed, sold, or otherwise furnished any firearm, knife, explosive, or other dangerous object, unless in the case of possession of any object of this type, the pupil had obtained written permission to possess the item from a certificated school employee, which is concurred in by principal or the designee of the principal.

- 48915(a)(2) Possession of a knife or other dangerous object of no reasonable use to the pupil.

An Administrative Panel will be convened to review the recommended expulsion on Friday, October 26, 2012 at 9:00 am in the Sunshine Unified School District Education Center located at 5234 Bethesda Street, Sunshine, CA 92345. You and Jacob Doe will have the opportunity to appear in person at the hearing, to employ and be represented by legal counsel or another representative, to inspect and obtain copies of all documents to be used at the hearing, to confront and question those who testify at the hearing, to question all other evidence presented, and to present oral and documentary evidence on Jacob Doe's behavior, including witnesses, concerning the incident with which Jacob has been charged.
NOTICE OF EXPULSION HEARING AND CHARGES (cont.)
RE: [Student]
[Date]
Page 2

If you intend to be represented by legal counsel at the expulsion hearing, please inform the district of such at least five business days prior to the hearing, as the District will also be represented by legal counsel. If the District is unable to secure legal counsel for the scheduled hearing date or if you fail to provide the district with timely notice of your intent to be represented by legal counsel, there will be good cause to continue the expulsion hearing, in order to allow the district to secure legal representation at the expulsion hearing.

Pursuant to California Education Code section 48918, you are entitled to one continuance of the hearing date for no more than 30 calendar days. You can exercise this right at any time up to the time of the hearing.

Following the hearing, the Governing Board will make its findings and order regarding the expulsion recommendation. If the Governing Board decides against expulsion, Jacob Doe will be reinstated and his placement determined by the administration after having consulted with the school staff, with mutual agreement among the parties involved. If the Governing Board decides to expel, it will issue written notice of the decision to expel within 10 schooldays after the conclusion of the hearing. The Board will act on the recommendation in open session.

The expulsion hearing will be conducted in a session closed to the public. If you wish to have the hearing conducted in open session, you must submit a request in writing, at least five days before the date of the hearing, that the hearing be conducted at a public meeting.

Furthermore, if Jacob Doe is expelled from the Sunshine Unified School District and attempts to enroll in another school district, you must inform the receiving school district of Jacob Doe’s status with the Sunshine Unified School District.

Enclosed is a copy of the relevant California Education Code Section 48900 et seq. and Board Policies 6144, describing suspension and expulsion procedures.

/s/
Dr. Bradley Pitt, Director of Student Services

10/15/2012
Date
Notice of Extension of Suspension
Notice of Extension of Suspension

October 5, 2012

184 Magnolia Way
Sunshine, CA 92345

Re: Jacob Doe
04/19/1999

Dear Mr. & Mrs. Doe:

The principal of Sunshine Middle School has recommended the expulsion of your son, Jacob Doe. The Education Code sections on student suspension and expulsion were explained to you and Jacob during a meeting held in Charles Brown's office on October 1, 2012. The expulsion process follows the law as outlined by the Education Code.

The incident of October 1, 2012, described in the attached Notice, demonstrates a clear breach of discipline and defiance of school rules and regulations by Jacob. Therefore, I am extending the suspension until a decision on expulsion is reached by the Board of Education.

I have determined that Jacob's presence at school would cause a danger to persons or property and/or cause disruption of the instructional process; therefore, Jacob is to remain away from school at all times during this suspension period. Arrangements for obtaining classwork to be completed at home may be made with Jacob's counselor or school administrator. Supervision of the pupil during the suspension is the responsibility of the parent or guardian.

It is important that you and Jacob meet with me as soon as possible to discuss the Statement of Charges and the hearing process. Please call (415) 222-5679 to make an appointment.

Sincerely,


______________________________
Bradley Pitt, Director of Student Services

cc:
Notice of Suspension
October 11, 2012

John Doe
Re: Jacob Doe
432 Center Street
Sunshine, CA 99999

Referred by: Smith, Mike
Grade Level: 8
Birthday: 4/19/1999
Student number: 2222
Permanent ID: 1000000

Dear Parent:

We have found it necessary to suspend your student for violating these Education Codes sections:

Ed Code Section  Violation
48900(b)     Possessed, sold, or otherwise furnished any firearm, knife, explosive, or other dangerous
              object, unless, in the case of possession of any object of this type, the pupil had obtained
              written permission to possess the item from a certificated school employee, which is
              concurred in by the principal or the designee of the principal.
48915(a)(2)  Possession of any knife or other dangerous object of no reasonable use to the pupil.

The incident that caused this suspension happened as follows:
Jacob was in possession of a two-and-a-half-inch locking blade knife at school. He took the knife out in class to
cut a poster board for an art project. Jacob says he began bringing the knife to school about a week ago. He
admitted the he brings the knife to school for self-defense purposes. Jacob told me no students have ever harassed
or threatened him to cause him to bring the knife to school. Jacob admitted to me that he knew it was wrong for
him to bring the knife to school. I called and left messages on the Does’ home phone and both parents’ cell
phones. I explained the situation to Jacob and the suspension will be given to Jacob to bring home to his parents.
The suspension form will be mailed.
Your child has been suspended for 5 days and makes a total of 5 this year. The first day of suspension is 10/11/2012. The first day back will be 10/8/2012.

At an informal conference, your student was advised as to the reasons for this disciplinary action and was afforded an opportunity to present a response. During this suspension, the student is expected to remain at home under adult supervision and may not attend school activities or be on or around the school campus. Students may be allowed to make up the work missed during the suspension at the discretion of the teacher, as provided in the education code. Should you have any questions, you may contact me at school.

Sincerely,

/s/

Mike Smith, Assistant Principal
Principal's Recommendation for Expulsion
SUNSHINE MIDDLE SCHOOL
15 Center Drive
Sunshine, California 99999
TEL: (415) 222-2121

Charles Brown, Ph.D. Principal Sunshine Middle School
Michael Smith, Assistant Principal Sunshine Middle School

To: Dr. Bradley Pitt, Director of Student Services

From: Charles Brown, Ph.D. Principal Sunshine Middle School

Date: October 4, 2012

Re: Suspension Report – Jacob Doe 8th grade

Recommendation for Expulsion

Incident Report

On Thursday, October 1, 2012 at approximately 11 am, Sunshine Middle School French teacher, Lindsey Tucker, reported to the Sunshine Middle School administration that Sunshine Middle School student Jacob Doe was in possession of a knife in class. Ms. Tucker reported that Jacob tried to use the knife to cut a poster board in class. Ms. Tucker immediately seized the knife from Jacob, and gave it to the administration. The weapon Jacob possessed in the classroom was a two and a half inch locking blade knife. Jacob was interviewed by administration.

Jacob admitted to the SMS administration that he brought the knife to school for self-defense purposes. When asked if anyone at school was harassing or threatening him, Jacob stated no one was harassing or threatening him. Jacob didn’t explain or give a reason why he brought the knife for self-defense reasons. Jacob admitted that he has brought the knife to school every day for approximately one week. Jacob wouldn’t specifically explain how he acquired the knife, or who gave it to him. Jacob stated that he knew it was wrong to bring the knife to school.

A phone message was left on the Does’ home land line at approximately 1:30 pm on 10/1/12, and both parents’ cell phones, informing them Jacob was suspended. As of 3:00 pm, no parent had returned the phone call. Jacob was given a copy of the suspension form to bring home and give to his parents. Jacob stated that he would give the suspension form to his parents. A copy of the suspension form was also mailed home to Mr. and Mrs. Doe. Jacob is suspended from school for five days for the following education code violations.

48915(a)(2) Possession of a knife or other dangerous object of no reasonable use to the pupil.
Possessed, sold, or otherwise furnished any firearm, knife explosive, or other dangerous object, unless, in the case of possession of any object of this type, the pupil had obtained written permission to possess the item from a certificated employee, which is concurred in by the principal or the designee of the principal.

Disposition

Given the seriousness of the incident, Jacob was suspended for five days pending the outcome of a meeting with Superintendent Bradley Pitt or designee.

Student Background

Academics

Jacob earned a 2.8 GPA at Sunshine Middle School the first semester this school year.

Sunshine Middle School Fall 2012

8th Grade GPA 2.83

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Sunshine Middle School Spring 2011

7th Grade GPA 2.67

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Sunshine Middle School Fall 2010

7th Grade GPA 2.43

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<td>Jazz Band</td>
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<tr>
<td>Life Science 7</td>
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<tr>
<td>History 7</td>
<td>C-</td>
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</table>
Sunshine Middle School Spring 2010
6th Grade GPA 2.43
English 6              C
Symphonic Band         A
Jazz Band              A
Math 6                 C
PE 6                   B
Life Science 6         C-
History 6              C-

STAR TEST
Below are Jacob's 2011 STAR testing scores:
    English/Language Arts 433Advanced
    Geometry              392Proficient
    Biology               405Advanced

ATTENDANCE
2010/2011
2 Truancies (unexcused class periods)
2 Tradies (late to class)

2009/2010
1 Truancy (Unexcused class periods)
4 Tardies (late to class)

BEHAVIOR
Jacob has not been suspended any days this year prior to the 10/11/12 incident.

Suspensions at Sunshine
Date   Incident                                                Disposition
10/1/12 Possession of a knife at School                       5 Day Suspension
9/30/10 Threw rock at another student which cause victim to suffer ½ inch cut in the back of his head 2.5 Day in-house-suspension

Referrals at Sunshine
11/1/10 Said "fuck" in class and wouldn't stop talking         Detention

INTERVENTION
An administrator personally met with Jacob each time he earned a referral or was suspended. Mark Black, Jacob's school counselor, met with Jacob last year and this year. Last year Mr. Black met with Jacob to discuss grade issues. This year Jacob recently had his 8th grade meeting with Mr. Black to discuss academic progress toward graduation.

RECOMMENDATION
Sunshine Middle School recommends expulsion based on the following Education Code violations:
California Education Code §48900
• Section (b) – Possessed, sold, or otherwise furnished any firearm, knife, explosive, or other dangerous object.

California Education Code §48915
• Section (a)(2) – Possessed, sold, or otherwise furnished a firearm, knife, explosive, or other dangerous object of no reasonable use to the pupil.

/s/  
Charles Brown Ph.D., Principal

10/11/12  
Date
Student Statement Form
STUDENT STATEMENT FORM

School Name  Sunshine Middle School  Date:  October 1, 2012  Student #:  10000000

SWORN DECLARATION OF  Jacob Doe

Print student name

I, Jacob Doe, declare the following:

I carried the weapon in self-defense, because I felt like something dangerous could happen to
me. I'm not sure why I brought it to school, nobody's bullying me. I have been bringing it for
about one week now, and this is the first time I pulled it out. I pulled it out because something
sharp was needed to cut a project. Yes, I did unconsciously know this was wrong.

I have read this declaration and do declare under penalty of perjury and the laws of the State of
California that it is true and correct to the best of my knowledge.

/s/  Jacob Doe

10/1/2012  Date
Photo of Knife
Teacher Referral
SUNSHINE MIDDLE SCHOOL
STUDENT REFERRAL

TO: Administrator X Counselor □ Teacher □ Nurse □

Student: Jacob Doe Initiator: Lindsey Tucker
Grade: 6 7 8 Subject: French Period: 4th

Administrator had knife out to cut poster board. Confiscated immediately

Other Problems:

Teacher’s Previous Actions: Detention □ Parent Contact □ Counselor Referral □

Disciplinary Action Taken:

Class Suspension: Dates:

School Suspension: Dates:

Detention: Number of Hours/Dates:

Warned:

Other:

Comments:

Administrator Signature:
Summary of Attendance
### SUNSHINE MIDDLE SCHOOL

**Summary of Attendance by Period 9-28-2011**

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**Summary of Attendance by Period 9-21-2010**

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EVALUATION FORM
Palo Alto Unified School District
May 13, 2014

Please fill in the bubble to the answers that apply ☐. If you make a mistake, do not erase your answer. Put an “X” through the incorrect bubble. ☒

1. The workshop presented information that was useful to me.
   Strongly Disagree  1  2  3  4  Strongly Agree

2. Handouts were useful and relevant.
   Strongly Disagree  1  2  3  4  Strongly Agree

3. Activities were appropriate and relevant.
   Strongly Disagree  1  2  3  4  Strongly Agree

4. Presenters were effective in their delivery.
   Strongly Disagree  1  2  3  4  Strongly Agree

5. A message to the presenters: __________________________________________

__________________________________________

Name:________________________________Title:________________________________
District/COE:_____________________________________________________________
Email:____________________________________☐ Check here to receive
our on-line newsletter!
Palo Alto Unified School District
September 25, 2014

2014 Site Administrator Survival Guide

Presenter: Sarah Levitan Kaatz
2014 Site Administrator Survival Guide

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STUDENT DISCIPLINE in 2014:
The Basics

Overview
- The Basics
- Discipline Timeline
- Preparing for and Presenting an Expulsion Case at Hearing
- After the hearing
- Pending Legislation

The Basics
- Jurisdiction to Suspend or Expel a Student
- Grounds for Suspension & Expulsion
- Mandatory/Discretionary Suspension & Expulsion
- Secondary Findings
- Informal Suspension Conference
- Suspension Notice Requirements
- Limitation on Suspension for First Offense
- Time Limits on Suspension from School
- Definitions - "Bullying/Cyberbullying," "Sexual Harassment," and "Knife"
Jurisdiction to Suspend or Expel Student
- Threshold question
- May suspend or expel student if he/she commits a suspendable or expellable offense for acts related to:
  - School activity
  - School attendance

Jurisdiction to Suspend or Expel Student (Con't)
- Generally, an act is related to a school activity or school attendance if committed:
  - While on any school grounds
  - While going to or coming from school
  - During the lunch period whether on or off school campus
  - During, or while going to or coming from, a school-sponsored activity

Grounds for Suspension & Expulsion
- Once jurisdiction is established, the District must prove that the student committed a suspendable or expellable offense
- Suspendable and expellable offenses are found in Education Code sections:
  - 48900(a)-(f); 48900.2; 48900.3; 48900.4; 48900.7
Grounds for Suspension and Expulsions (Alternatives)

- Instead of or part of disciplinary action, the District may require the student to perform community service and other alternatives, including counseling and/or an anger management program.

Mandatory/Discretionary Suspension & Expulsion

- The Superintendent or principal must suspend and recommend expulsion, and the Governing Board must accept for the following offenses:
  - Possessing, selling, or furnishing a firearm;
  - Brandishing a knife at another person;
  - Selling a controlled substance (i.e., drugs);
  - Committing or attempting to commit a sexual assault or committing a sexual battery; and
  - Possessing an explosive.

Mandatory/Discretionary Suspension & Expulsion (Con't)

- All other listed offenses are discretionary for suspension and/or expulsion.
Secondary Findings
- For expulsion recommendations, except those for charges under 48315(c), secondary findings must be made and proved by "substantial evidence" that:
  - Other means of correction are not feasible or have repeatedly failed to bring about proper conduct, or
  - Due to the nature of the violation, presence of the student causes continuing danger to physical safety of students or others

Informal Suspension Conference
- Suspension preceded by informal conference except in "emergency situation"
- Student informed of reasons for suspension and evidence, and provided opportunity to present facts/evidence

Suspension Notice Requirements
- At time of suspension, reasonable effort to contact student’s parent that student has been suspended
- Notice must also be sent in writing to parent
- If student released to peace officer, immediate notice to parent
**Limitation on Suspension for First Offense**

- May only suspend if other means of correction have failed to bring about proper conduct.
- For first offense, only suspend if:
  - Danger to persons, or
  - Violation of offense listed in 48900(a), (b), (c), (d), or (e)

**Time Limits on Suspension from School**

- Only five school days at a time.
- No more than 20 school days per year.
- No more than 30 school days per year if student transferred to continuation school.

**Time Limits on Suspension from School (Con’t)**

- What happens if the student is suspended for more than 20 school days per year?
Definitions

- “Bullying/Cyberbullying”
  - “Bullying” includes any severe or pervasive act by one or more students with certain effects on one or more “reasonable students”
  - Effects on reasonable students
  - Definition of reasonable student
  - “Cyberbullying” includes the above done by “electronic act” that:
    - Originated on or off campus
    - Phone/computer/paper/electronic device
    - Messaging/text/email
    - Social networking sites
    - Jurisdictional issues/Free Speech/Due Process

Definitions (Con’t)

- “Sexual harassment”
  - Unwelcome sexual advances, requests for sexual favors, other verbal, visual, or physical conduct of a sexual nature
  - Related to academic status, progress, performance, educational environment

Definitions (Con’t)

- “Knife”
  - Dirk/dagger/weapon with fixed blade
  - Primarily for stabbing
  - Blade longer than 3.5 inches
  - Folding blade that locks in place
  - Razer with unguarded blade
**Discipline Timeline**

- Schoolday 1 of the Incident: Suspension
- Schoolday 5 of Suspension: Recommendation/Extension
- 10 Days Before Expulsion Hearing: Notice
- Three Calendar Days After Hearing: Recommendation if Administrative Panel
- Schoolday 40 of Suspension: Governing Board Decision

**Schoolday 1 of the Incident: Suspension**

- Student’s misconduct should be discerned and investigation commenced
- If appropriate, student suspended
- Principal or designee should begin the process of determining which offense(s) were committed and whether to recommend expulsion
- Notice to parent

**Schoolday 5 of Suspension: Recommendation/Extension**

- If applicable, principal or designee prepares and provides District office with recommendation for expulsion
- Notice and meeting with parents
- Extension of suspension until Governing Board decides whether to expel
10 Days Before Expulsion Hearing: Notice

- Expulsion hearing within 30 schooldays of expellable offense
- Notice:
  - Date and place of hearing
  - Statement of charges
  - District’s disciplinary rules
  - Notice of obligations under 48915.1(b)
  - Notice of student’s rights

Three Calendar Days After Hearing: Recommendation if Administrative Panel

- If administrative hearing panel conducts expulsion hearing, within three calendar days of hearing:
  - Whether to recommend expulsion to Governing Board
  - If so, findings of facts submitted to Governing Board

Schoolday 40 of Suspension: Governing Board Decision

- Governing Board issues decision unless student requests in writing for postponement
- Governing Board action must be taken in open session
- Governing Board may expel after finding that student:
  - Committed expellable offense and
  - Other means not feasible or failed to bring about proper conduct, and/or
  - Presence of pupil causes danger to physical safety of students or others
- Written notice to parent within 10 schooldays of decision
Preparing for and Presenting an Expulsion Case at Hearing

- Documentation and Investigation
- Hearsay Basics
- Fear Declarations
- Subpoena Power
- Who Should Testify & What Documents May be Used
- Opening & Closing Statements and Cross-Examination
- Direct Witnesses – What to Ask
- Evidentiary Standards, Rules & Objections
- Special Procedures: Sexual Assault or Battery
- Secondary Findings

Documentation and Investigation

- Investigate as soon as possible
- May conduct investigation at same time as police
- Inform witnesses investigation conducted confidentially
- Separate witnesses

Documentation and Investigation (Con't)

- Document:
  - Date, time of day, location, and other details that place student's actions in context
  - List of witnesses/potential witnesses with contact information
  - How student's actions created danger to persons/property or degree of danger posed
  - All egregious behavior
  - During interviews, take notes and prepare questions beforehand
Hearsay Basics

- A statement, made by someone other than the person testifying at the hearing, when offered to prove the truth of the matter asserted
  - E.g. “Jim told me that he saw the student carrying a knife on campus.”
- Can be written statement or document
- Hearsay evidence is admissible but non-hearsay evidence must also be presented
- Hearsay exceptions

Fear Declarations

- Student declarations can be submitted as non-hearsay evidence if intimidation keeps them from being present at hearing
  - Note: Intimidation of a witness is a suspendable or expellable offense

Fear Declarations (Con’t)

- The Governing Board, hearing officer, or administrative panel must specifically find that good cause exists and determine that:
  - Disclosure of identity of the witness and/or live testimony of the witness would subject that witness to unreasonable risk of psychological or physical harm
Subpoena Power

- Governing Board or designee may issue subpoenas at request of Superintendent or designee, or student for:
  - Personal appearance of percipient witness
  - Non-cooperating witnesses

Who Should Testify & What Documents May be Used

- Any person with knowledge of the expellable offense(s) may testify
- Students records, witness statements, police reports, and fear declarations may be submitted as evidence

District Witnesses – What to Ask

- For District personnel:
  - Name
  - Current assignment
  - Length of time in position
  - Length of time with District
  - Other positions (if any)
  - History in student management/discipline
  - Involvement in incident
  - Observations
  - Investigation
  - Whether student's presence causes danger or other means of correction failed to bring about proper conduct
Evidentiary Standards, Rules and Objections

- Preponderance of the evidence that student committed an expellable offense
  - I.e., more likely than not
- Evidence can be direct or circumstantial and technical rules of evidence do not apply
- Hearsay evidence okay but cannot be only evidence

Special Procedures for Cases of Sexual Assault or Battery

- Complaining witness must
  - Be given five calendar days notice prior to being called to testify, and
  - May be entitled to up to two adult support persons present during testimony
- Evidence of complaining witness's prior sexual conduct presumed admissible
- Accused and complaining witness advised after allegation made to refrain from personal and telephone contact with each other during expulsion process
- Provided with disciplinary rules and advised of rights

Rehabilitation Plans

- Governing Board must recommend rehabilitation plan at time of expulsion order
- Examples of rehabilitation plans and conditions for suspended expulsion orders include:
  - Improved academic performance; counseling (i.e., behavior, drug, alcohol); community service; attendance contract; agreement not to violate rules/policies/Education Code;
Expulsion Appeals

- Student may appeal expulsion order to County Board of Education
- County Board of Education renders decision after considering the record and, in rare cases, new evidence

Pending Legislation

- AB 420 (2013, Dickinson)
  - Limitations on suspensions for disruption of school activities or willful defiance of valid authority (K-3rd; 4th-12th)
  - Prohibits expulsions of any student for disruption of school activities or willful defiance of valid authority

Student Search and Seizure
**Searches on Campus**

**U.S. Constitution**

- "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."

U.S. Constitution, 4th Amendment

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**Searches at Schools**

**The California Constitution**

- The Safe Schools Guarantee
  - "Students and staff of public schools have the inalienable right to attend campuses that are safe, secure, and peaceful."

California Constitution Article I, Section 28

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**The Power to Detain and Question**

- "The broad authority of school administrators over student behavior, school safety, and the learning environment requires that school officials have the power to stop a minor student in order to ask questions or conduct an investigation even in the absence of reasonable suspicion, so long as such authority is not exercised in an arbitrary, capricious, or harassing manner."

*In re Randy G.* (2001) 26 Cal.4th 556, 559

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**Searches by Schools**

**Standards to Apply**

- A search of a student or their belongings by a teacher or a school official is justified if there are **reasonable grounds** for suspecting the search will turn up evidence that the student has violated either the law or a school rule.

- Reasonable grounds are shown by **articulable facts together with rational inferences** from those facts.

  *In re William G.* (1985) 40 Cal.3d 550, 554

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**Searches by Schools**

**Standards to Apply**

- Compare to standard for law enforcement: Possibility of finding evidence of illegal conduct **more likely than not**. This probable cause standard is much more difficult to meet.


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**Searches by Schools No Miranda Warning or Warrant**

- School officials do not need to give a student a Miranda warning prior to interrogation.
  

- School officials do not need to obtain a warrant prior to a search.
  
  *In re William G.* (1985) 40 Cal.3d 550
**Searches by Law Enforcement Using School Standards**

- Generally, student searches should be conducted by school personnel rather than law enforcement.
- However, searches conducted by law enforcement at school direction may be done using the standards applicable to schools.

*In re Jose Y (2008) 141 Cal.App.4th 748*

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**Searches by Schools Reasonable Suspicion Examples**

- Independent reports by more than one student.
- Student demeanor and/or mental or physical condition.
- Single, highly reliable student or a staff member.
- Outside informant who provides a significant level of detail concerning the identity of the alleged wrongdoer and the specific device used to perpetuate wrongdoing.

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**Searches by Schools Examples Using Technology**

- Presence with the electronic or digital device at the time and location of the illegal conduct.
- Suspicious conduct such as steadily holding up cell phone or other device in the direction of a fight.
- Standard is whether there is reasonable suspicion of a crime or a violation of school rules.
Searches by Schools
Reasonable Suspicion Examples

- Most critical in the context of search of student electronic and
digital devices is that there is a correlation between the
wrongful behavior of the student through the use of the device
and the intended findings of the search.
- Just like when conducting searches of a student's backpack or
purses, school officials must have a specific reasonable
suspicion, supported by articulable facts, that support both the
initial search of a student's belongings and the scope of the
search conducted.

Compare to Case Without
Technology

- Example: Would an administrator have the ability
to search a student on campus if she saw the
student at the mall over the weekend smoking
cigarettes?

Hypothetical 1

- You see Student X at a café before school. Student
X has her laptop and is utilizing the free WiFi at the
café to upload a video onto the Internet of Student
Y striking Student Z in a fight. When she is done,
she closes the laptop and heads towards school.
Can you search her laptop upon arrival at school?
Can you search her cell phone or digital camera for
the original footage?
Hypothetical 2

- Student has a cell phone in violation of policy. What can you look at?
- Call comes in from a friend in another class. What can you do?
- Text comes from another friend at school. "Have stuff. Bring $. I'm freaking. Hurry." Now what?
- Another text says, "This is it." and has a picture attached. Now what?

General Principles

- Law Enforcement may interview students on campus.
- School employees should act reasonably.
- School employees should not obstruct.
Police: Reasonableness

Acting reasonably means:
- Confirm identity of officer
- Retrieve student
- Provide private space
- Do not consent to the interview, just facilitate
- May be present, unless student or officer objects
- If necessary, police may remove child

CPS and Social Workers

- Student must be given the option of either:
  - Being interviewed in private with the CPS or social worker
  - Selecting any school staff member to be present at the interview
    - This includes any certificated or classified employee or volunteer aide
    - Staff member cannot participate in the interview

Parental Notification

- If the student is removed by police, Administrators must notify parent or guardian immediately, unless the student is a suspected victim of child abuse.
- Tell parent who the child was released to and where they were taken.
Parental Notification

If child is a victim of suspected abuse:
- Give the officer the address and phone number of the parent/guardian.
- Officer will contact parents.

Custody Issues

- It is helpful to know the specific custody arrangement between the parents.
- School personnel may ask the parents for details, or request a copy of the court custody order.
**Custody**

- **Joint Custody** means joint legal and physical custody. (Family Code § 3002.)

- **Joint Legal Custody** means that both parents share the right and the responsibility to make decisions relating to the health, education and welfare of the child. (Family Code § 3003.)

- **Joint Physical Custody** means that each parent must "have significant periods of physical custody" shared so that the child has frequent contact with both parents.

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**Custody**

- **Sole Legal Custody** means that a parent has the sole right and responsibility to make decisions relating to the health, education and welfare of the child. (Family Code § 3006.)

- **Sole Physical Custody** means that a child resides with and is under the supervision of one parent.

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**Student Records**

- **Access to Student Records**: Regardless of legal or physical custody, parents have an absolute right to access to student records related to their children.

- **Authority to Release Student Records to Others**: A parent must have joint or sole legal custody in order to give permission to release records to other persons.

- **Authority to Challenge a Student Record**: A parent must have joint or sole legal custody in order to challenge a student record.
Residency

- Residency: A student can only have one place of residence for the purposes of registering for school. If both parents claim that student resides in their home, the District may look at custody orders to assist in determining the student's residence.

Education Code §§ 49081 and 49069

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Emergency Cards

- Ideally, students should be released only to parents or persons listed on the student's emergency notification card.

- When in doubt regarding custody or other issues, contact the police before releasing the student.
Emergency Cards

- If a parent calls and asks that the student be released to another person, take steps to ensure that the child is properly released. This can include:
  - calling the parent back at the number on record
  - checking identification
  - asking the child if the person picking him or her up is who they say they are

Handling Disruptions on Campus

General Rules

- Administrators have the most control over "outsiders"
- No outsider shall enter or remain on school grounds during school hours without registering with principal/designee
- Administrator can stop and question anybody
General Rules

- Registration can be denied if principal or designee has reasonable basis to conclude that the outsider's presence would cause a disruption.
  - Do not have to wait for actual disturbance
    109 Cal.App.4th 652 (abortion protestor case)

Parents/Guardians

- Because parents are not "outsiders", they cannot be excluded from campus unless their presence is actually causing a disruption or interfering with the orderly conduct of school business. (Penal Code § 626.7).
- Once the administrator in charge of the site, or his designee, has a reasonable basis to believe that the parent’s continued presence is causing a disturbance or is interfering with the activities of the campus, the parent may be asked to leave.

Parents/Guardians

- After asking parents to leave, you may send a letter banning reentry for 14 days. (Penal Code section 626.4.)
- If parents return police can cite and remove.
- $500 fine and/or imprisonment
Abusive Communications

- Abusive telephone calls are not allowed - period.
  - At work: report harassing calls to law enforcement
    - Direct the person to stop calling
    - Multiple polite calls are not a violation
  - At home: multiple calls to a residence, even if polite, can be a violation
    - Direct person not to call you at home so there is no question of implied consent
      (Penal Code section 653m)

Visiting Classrooms

- Parents have a right to observe.
- May not be disruptive.
- Time spent in classroom must be reasonable.
- May use administrator as a gatekeeper.

Questions?
STUDENT SEARCH AND SEIZURE CHECKLIST

Applicable Standard for the Search of a Students’ Digital and Electronic Devices.
Includes, but is not limited to: Cellular/Digital Phones, Pagers, Personal Data Assistants (PDAs), Laptop Computers, with Wireless Phone and Internet Capability, MP3 and MP4 Players, such as IPODs and Zunes, Cameras and Video Cameras, Electronic Listening and Recording Devices, and Other Portable Devices Which Capture Images and Record Videos.


2. A search is lawful depending on
   - whether the search was justified at its inception, and
   - whether the scope of the search, as actually conducted, was reasonably related to the circumstances that justified the original search.

3. The norm is that a search is justified at its inception when a school official has reasonable grounds to suspect that the search of the student or the student’s belongings will disclose evidence that the student has or is violating the law or a school rule. (Id., citing T.L.O., 469 U.S. at 341-42.)

4. A school official’s reasonable suspicion must be supported by articulable facts and absent same, the student’s privacy interests trump a school official’s desire to conduct a search. (Id. at 806, citing In re William G. (1985) 40 Cal.3d 550, 564.)

5. Most critical in the context of search of student cell phones and other electronic devices, “[a] correlation between the wrongful behavior of the student and the intended findings of the search is essential for a valid search of the student [and the student’s digital or electronic device] under the Fourth Amendment.” (Id.)

6. Thus, in order to justify any level of search into the contents of a student’s property, the school administrator must have articulable facts supporting a reasonable suspicion that a certain law or school rule is being violated through the use of the digital or electronic device and that the search into its contents is directed at finding evidence to support such a violation of the law or school rule.

7. Just like when conducting searches of a student’s backpack or purse, school officials must have a specific reasonable suspicion, supported by articulable facts, that support both the initial search of a student’s belongings and the scope of the search conducted.
8. Mere violation of a school rule regarding use of a digital or electronic device does not justify a search of the device's contents absent a reasonable suspicion supported by articulable facts that the student was violating the law or school rule that would require a search of the phone’s contents to confirm.

**Consequences of Unlawful Searches.**


2. However, the evidence obtained through an unlawful digital or electronic device search cannot be utilized by law enforcement or prosecutors in any juvenile or criminal proceeding. (E.g., *In re William G.* (1985) 40 Cal.3d 550, 567); and the unlawful search may subject school administrators and the District to a civil action for money damages based on violation of a student’s Fourth Amendment rights and predicated on the 42 U.S.C. § 1983.
Overview
Sarah Levitan Kaatz is Managing Partner of Lozano Smith's Monterey office. She specializes in labor and employment law and student issues for school districts. Ms. Kaatz spent two years with the U.S. Department of Labor in its Office of Administrative Hearings before joining Lozano Smith.

Since joining Lozano Smith in 1999, Ms. Kaatz has advised K-12 school districts and community college districts with regard to classified and certificated employment issues, labor relations and student related concerns.

Experience
Ms. Kaatz has represented clients in numerous administrative proceedings, discipline hearings and appeals, and grievance arbitrations. She negotiates collective bargaining agreements on behalf of school district clients using both traditional and interest based bargaining approaches. She regularly advises clients regarding discrimination complaints, personnel investigations, labor law compliance and related personnel issues.

Presenter Experience
Ms. Kaatz is a frequent presenter to school audiences, including the Association of California School Administrators (ACSA) and the California School Boards Association (CSBA), on issues such as sexual harassment prevention, employment discrimination, employee and student discipline, and cyber-bullying. She is also a regular presenter of student and employment topics at Lozano Smith's Central Coast education Law Consortium.

For four years, Ms. Kaatz was the attorney coach for Seaside High School's Mock Trial Team and took the team to State for two of those years.

Articles

Education
Ms. Kaatz earned her J.D. from Hastings College of the Law in San Francisco, and was a member of the Moot Court Board. She established roots on the Central Coast while an undergraduate student at the University of California at Santa Cruz, where she earned her B.A. with honors.