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LEGAL UPDATE

November 24, 2014

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To: Superintendents, Member School Districts (K-12)

From: Carl D. Corbin, Associate General Counsel *CDC*

Subject: **New Procedures for Involuntary Transfers to County Community Schools and New Limitations when Student Expulsion Not Recommended**
Memo No. 37-2014

Senate Bill (“SB”) 1111,¹ effective January 1, 2015, provides new procedures and limitations for the involuntary transfer of students to county community schools², modifying Education Code sections 1981 and 1983³, repealing section 1981.2, and adding section 1981.5. SB 1111 also made a number of minor non-substantive revisions to section 48918 and also added new limitations regarding a student’s educational placement when a hearing officer or administrative panel does not recommend expulsion for the student. The various new limitations and new requirements are summarized below. We encourage our clients to review and update their policies in accordance with this new legislation.

1. **Homeless Students** - References to homeless students were removed in section 1981 and section 1981.2, which had defined “homeless children,” was repealed. Therefore, referrals to county community schools can no longer be made on the basis of homelessness.
2. **Expelled Students** – Pursuant to section 1981.5, students who have been expelled “shall have the right to reenroll in his or her former school or another comprehensive school immediately after being readmitted from the expulsion order...” However, the section also provides “[n]othing in this section is intended to limit the school placement options

¹ Available at: http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB1111. For convenience, a copy of SB 1111 is also included with this Legal Update.

² Pursuant to Education Code section 1980, a County Board of Education may, but is not required to, establish and maintain one or more community schools.

³ All further references will be to the Education Code unless otherwise stated.

that a school district may recommend for a pupil being readmitted.” Lastly, the section clarifies that only the governing board of the district that expelled the student may extend the duration of the expelled student’s placement in a county community school.

3. **Referrals from School Attendance Review Boards (“SARB”)** – Pursuant to section 1981, prior to a student being referred to a county community school by a school district, both the county office of education and school district must determine:
 - a. The county community school has room for the student;
 - b. The county community school meets the educational needs of the student;
 - c. The parent (guardian or responsible adult)⁴ has not expressly objected to the referral based on one or more of the following:
 - i. Reasonable concerns relating to the student’s safety;
 - ii. Geographic accessibility;⁵
 - iii. Inability to transport; or
 - iv. The school does not meet the student’s educational needs.

The school district may require the objection from the parent to be in writing if the district has advised the parent they may object in writing.

The school district may either address the express objection(s) of the parent or find an alternative placement in another comprehensive or continuation school within the school district. However, pursuant to section 1981(b)(3), if the school district has offered the student all other options, then the school district may still refer the student to the county community school.

Pursuant to section 1981(b)(4) the student has a right to return to his or her prior school or another appropriate school at the end of the semester following the semester when the acts leading to the referral occurred. The right to return shall continue until the student turns 19, except special education students have the right to return until the student turns 22.

⁴ All subsequent references to “parent” refer to parent, guardian, responsible adult appointed by the juvenile court, or adult student as appropriate.

⁵ Pursuant to section 1981(f), “geographically accessible” means the student can reasonably travel to and from the school and is able to pay for transportation costs that are above and beyond the costs to attend his or her school of residence or prior school, whichever is farther away.

4. **Referrals from Probation** – Pursuant to section 1981(c):
- a. A student who has been made a ward of the court⁶ who is on probation, with or without the supervision of a probation officer, with an order of the juvenile court⁷ may be referred to a county community school without further requirements.
 - b. A student under the supervision of a probation officer and with the consent of the student's parent may be referred to a county community school subject to the following:
 - i. The attorney or person holding educational rights for the student who is under the jurisdiction of the delinquency court may use the procedures set forth in California Rule of Court 5.651 to address any change of placement that results in the student being placed in a county community school that is not the student's school of origin.
 - ii. The attorney or person holding educational rights for the student who is under the jurisdiction of the delinquency court may, during a regularly scheduled hearing, raise any concerns as to whether the educational needs of the student are being met at the county community school.
 - iii. There is no limitation on the rights or responsibilities of any person as described in Welfare and Institutions Code section 726(c)(2)⁸.
 - c. A student under the supervision of a probation officer pursuant to Welfare and Institutions Code sections 726 and 727(a)(3) with the consent of the student's parent (or responsible adult appointed by the juvenile court) may be referred to a county community school subject to the following:
 - i. All educational and school placement decisions shall seek to ensure that the student is in the least restrictive educational program, has access to the academic resources, services, and extracurricular and enrichment activities that are available to all pupils, and are based on the best interests of the student.

⁶ Pursuant to Welfare and Institutions Code sections 601 and 602.

⁷ Pursuant to Welfare and Institutions Code sections 725, 727, 729.2, and 791.

⁸ (2) All educational and school placement decisions shall seek to ensure that the child is in the least restrictive educational programs and has access to the academic resources, services, and extracurricular and enrichment activities that are available to all pupils. In all instances, educational and school placement decisions shall be based on the best interests of the child. If an educational representative or surrogate is appointed for the child, the representative or surrogate shall meet with the child, shall investigate the child's educational needs and whether those needs are being met, and shall, prior to each review hearing held under Article 10 (commencing with Section 360), provide information and recommendations concerning the child's educational needs to the child's social worker, make written recommendations to the court, or attend the hearing and participate in those portions of the hearing that concern the child's education.

- ii. The attorney or person holding educational rights for the student who is under the jurisdiction of the delinquency court may use the procedures set forth in California Rule of Court 5.651 to address any change of placement that results in the student being placed in a county community school that is not the student's school of origin.
 - iii. The attorney or person holding educational rights for the student who is under the jurisdiction of the delinquency court may, during a regularly scheduled hearing, raise any concerns as to whether the educational needs of the student are being met at the county community school.
 - iv. There is no limitation on the rights or responsibilities of any person as described in Welfare and Institutions Code section 726(c)(2).
5. **Voluntary Transfers to County Community School** – Pursuant to section 1981(d), a school district of attendance or residence, as appropriate, may approve the request of the student's parent for enrollment in a county community school subject to:
- a. The district determines the placement will promote the educational interests of the student;
 - b. The county community school has space available; and
 - c. The parent may rescind the request for placement in the county community school and the student will immediately be reenrolled in the school the student attended at the time of the referral unless the parent consents to enrollment in another appropriate school.
6. **Transfer of Educational Records** – Pursuant to section 1981(e), the procedures described in sections 51225.2(b)-(e) governs the transfer of credits, educational records (including special education), and grades required pursuant to sections 48645.5(a) and 49068 when the student transfers to and from the county community school. This includes the requirement that the student's school records or copy of school records be provided to the requesting school within 10 school days from the date the request for records was received.
7. **Purpose of County Community School** – Pursuant to section 1983, students enrolled in county community schools shall be assigned to classes deemed most appropriate for reinforcing or reestablishing educational development. The classes or programs may include but not be limited to basic educational skill development, on-the-job training, school credit recovery assistance, tutorial assistance, and individual guidance activities. An individually planned educational program must be developed for each enrolled student based on an educational assessment. The course of study for the county community school must be adopted by the county board of education and shall enable a student to continue academic work leading to the completion of a regular high school diploma. A county community school is responsible for ensuring compliance with all

responsibilities for special education “child find,” assessment, and services pursuant to an individualized educational program for all enrolled students. A county community school is also responsible for compliance with all federal and state laws regarding the provision of services and programs for students who are English learners. Independent study may be provided so long as it is voluntary and in accordance with sections 51745 et seq.

8. **Student Expulsion** – SB 1111 made a number of minor non-substantive revisions to section 48918, but added a new limitation regarding a student’s educational placement when a hearing officer or administrative panel does not recommend expulsion for the student at section 48918(e):

(e) Within three schooldays after the hearing, the hearing officer or administrative panel shall determine whether to recommend the expulsion of the pupil to the governing board of the school district. **If the hearing officer or administrative panel decides not to recommend expulsion, the expulsion proceedings shall be terminated and the pupil immediately shall be reinstated and permitted to return to the classroom instructional program from which the expulsion referral was made, unless the parent, guardian, or responsible adult of the pupil requests another school placement in writing.** Before the placement decision is made by the parent, guardian, or responsible adult, the superintendent of schools or the superintendent’s designee shall consult with school district personnel, including the pupil’s teachers, and the parent, guardian, or responsible adult regarding any other school placement options for the pupil in addition to the option to return to his or her classroom instructional program from which the expulsion referral was made. **If the hearing officer or administrative panel finds that the pupil committed any of the acts specified in subdivision (c) of Section 48915, but does not recommend expulsion, the pupil shall be immediately reinstated and may be referred to his or her prior school or another comprehensive school, or, pursuant to the procedures set forth in Section 48432.5, a continuation school of the school district.** The decision not to recommend expulsion shall be final. (Emphasis added).

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. Therefore, we recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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Senate Bill No. 1111

CHAPTER 837

An act to amend Sections 1981, 1983, and 48918 of, to add Section 1981.5 to, and to repeal Section 1981.2 of, the Education Code, relating to pupils.

[Approved by Governor September 29, 2014. Filed with
Secretary of State September 29, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1111, Lara. Pupils: involuntary transfer: county community schools.

(1) Existing law authorizes a county board of education to establish and maintain one or more community schools into which the county board of education may enroll specified pupils, including, but not limited to, pupils who are expelled for specified reasons, referred as the result of the recommendation by a school attendance review board, probation referred, or homeless children.

This bill would revise the list of pupils who may be involuntarily enrolled in a county community school to limit the kind of probation referrals and remove homeless children. The bill, with regard to pupils referred as the result of a recommendation by the school attendance review board, would require that the school district and the county office of education determine that the county community school has space available to enroll the pupil, that the pupil's educational needs will be met by the county community school, and that the parent, guardian, or responsible adult of the pupil does not expressly object to the referral based on specified reasons. The bill would authorize the school district to either address the express objections or find an alternative placement in another comprehensive or continuation school within the school district, or, after offering the pupil all other options, refer the pupil to the county community school. The bill would require the school attendance review board to include a school option that is geographically accessible, as defined, to the pupil, if the county community school is not geographically accessible, as specified. The bill would also provide that the pupil has the right to return to his or her previous school, or other appropriate school, at the end of the semester following the semester when the acts leading to referral occurred. The bill would specify the period of time during which the pupil has the right to return. The bill would allow enrollment of certain other pupils in a county community school with the consent of the pupil's parent, guardian, or responsible adult. The bill would authorize, with respect to certain probation referrals to a county community school, certain persons, including the attorney for a pupil who is under the jurisdiction of a delinquency court, to take specified actions related to the enrollment of a pupil in a county community school.

(2) Existing law requires a county community school to prescribe an individually planned educational program based on an educational assessment for each pupil. Existing law requires the course of study of a county community school to be adopted by the county board of education to enable each pupil to continue academic work leading to the completion of a regular high school program.

This bill would require county boards of education operating county community schools to ensure, among other things, that appropriate services and programs specified in a pupil's individualized education program are provided.

(3) This bill would provide a pupil who has been involuntarily enrolled in a county community school the right to reenroll in his or her former school or another comprehensive school immediately after being readmitted from an expulsion order or court-ordered placement. The bill would provide that only the governing board of the school district that issued the initial order or subsequent order to expel may extend the duration of an expelled pupil's placement in a county community school.

(4) Existing law requires the governing board of each school district to establish rules and regulations governing procedures for the expulsion of pupils. Existing law requires the adopted rules and regulations to require, if a hearing officer or administrative panel decides not to recommend expulsion, the expulsion proceedings to be terminated and the pupil to be immediately reinstated and permitted to return to a classroom instructional program, any other instructional program, a rehabilitation program, or any combination of these programs.

This bill would require the adopted rules and regulations to instead require that the pupil be permitted to return only to the classroom instructional program from which the expulsion referral was made, unless a parent, guardian, or responsible adult of the pupil requests another school placement in writing. The bill would, before the placement decision is made by the parent, guardian, or responsible adult, require the superintendent of schools or the superintendent's designee to consult with school district personnel, including the pupil's teachers, and the parent, guardian, or responsible adult regarding any other school placement options for the pupil in addition to the option to return to his or her classroom instructional program from which the expulsion referral was made. By requiring the governing board of a school district to establish or revise the rules and regulations governing procedures for the expulsion of pupils, the bill would impose a state-mandated local program.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 1981 of the Education Code is amended to read:
1981. The county board of education may enroll pupils in a county community school who are any of the following:

(a) Expelled from a school district for any reason other than those specified in subdivision (a) or (c) of Section 48915.

(b) (1) Referred to a county community school by a school district as a result of the recommendation by a school attendance review board. A pupil shall not be referred to a county community school by a school district pursuant to this subdivision unless the school district and the county office of education determine all of the following:

(A) The county community school has space available to enroll the pupil.

(B) The county community school meets the educational needs of the pupil.

(C) (i) The parent, guardian, or responsible adult of the pupil has not expressly objected to the referral based on one or more of the following reasons:

(I) Reasonable concerns related to the pupil's safety.

(II) Geographic accessibility.

(III) Inability to transport.

(IV) The school does not meet the pupil's educational needs.

(ii) The school district may require the objection to be in writing if it has advised the parent, guardian, or responsible adult that they may object, in writing, for one of these reasons.

(2) If the county community school recommended pursuant to paragraph (1) is not geographically accessible to the pupil, the school attendance review board shall also include in its recommendation a school option for the pupil that is geographically accessible to the pupil and meets the criteria specified in paragraph (1).

(3) If the parent, guardian, or responsible adult of the pupil objects for any of the reasons described in subclauses (I) to (IV), inclusive, of clause (i) of subparagraph (C) of paragraph (1), the school district may either address the express objection or find an alternative placement in another comprehensive or continuation school within the school district. If the school district has offered the pupil all other options, the school district may refer the pupil to the county community school.

(4) The pupil has the right to return to his or her prior school or another appropriate school within his or her school district at the end of the semester following the semester when the acts leading to referral occurred. The right to return shall continue until the end of the pupil's 18th year of age, except that a pupil with exceptional needs, consistent with Section 56041 of this code and Section 1412(a)(1)(A) of Title 20 of the United States Code, shall have the right to return until he or she turns 22 years of age.

(c) (1) (A) On probation, with or without the supervision of a probation officer and consistent with an order of a juvenile court, who are considered to be wards of the court under Sections 601 and 602 of the Welfare and

Institutions Code and ordered placed pursuant to Sections 725, 729.2, and 791 of, and paragraph (2) of subdivision (a) of Section 727 of, the Welfare and Institutions Code.

(B) Under the supervision of a probation officer, with the consent of the minor and the minor's parent or guardian, pursuant to Section 654 of the Welfare and Institutions Code.

(C) Under the supervision of a probation officer pursuant to Section 726 and paragraph (3) of subdivision (a) of Section 727 of the Welfare and Institutions Code with the consent of the pupil's parent, guardian, or responsible adult appointed by the juvenile court to make educational decisions for the pupil. The enrollment of a minor covered by this paragraph in a county community school shall be consistent with paragraph (2) of subdivision (c) of Section 726 of the Welfare and Institutions Code, which provides that all educational and school placement decisions shall seek to ensure that the youth is in the least restrictive educational program, has access to the academic resources, services, and extracurricular and enrichment activities that are available to all pupils, and are based on the best interests of the child.

(D) Unless specifically ordered by a juvenile court, nothing in this subdivision shall be construed to conflict with the existing rights of a parent, guardian, or responsible adult appointed by the juvenile court pursuant to Section 726 of the Welfare and Institutions Code to make educational placement decisions for the minor.

(E) With respect to a pupil's enrollment in a county community school pursuant to subparagraph (B) or (C), and consistent with paragraph (2) of subdivision (c) of Section 726 of the Welfare and Institutions Code and California Rule of Court 5.651, all of the following shall apply:

(i) The attorney for, or the person holding the educational rights of, a pupil who is under the jurisdiction of the delinquency court may use the procedures set forth in California Rule of Court 5.651 to address any change of placement that results in the enrollment of the pupil in a county community school that is not his or her school of origin.

(ii) The attorney or the person holding the educational rights appointed by the court for a pupil who is under the jurisdiction of the delinquency court may, during a regularly scheduled hearing, raise any concerns with respect to whether the enrollment of the pupil in a county community school is meeting the educational needs of the pupil.

(iii) Nothing in this subparagraph is intended to limit in any way the rights or responsibilities of any person as set forth in paragraph (2) of subdivision (c) of Section 726 of the Welfare and Institutions Code and California Rule of Court 5.651.

(2) On probation or parole and not in attendance at any school, where enrollment is with the consent of the parent, guardian, or responsible adult, or the pupil, if he or she is 18 years of age or older. Nothing in this subdivision shall impact the provision of services or funding for youth up to 25 years of age pursuant to subdivision (b) of Section 1982, as that section read on September 25, 2013.

(3) Expelled for any of the reasons specified in subdivision (a) or (c) of Section 48915.

(4) Enrollment in a county community school pursuant to this subdivision shall be consistent with subdivision (b) of Section 48645.5.

(d) Pupils whose school districts of attendance, or, for pupils who do not have school districts of attendance, school districts of residence, have, at the request of the pupil's parent, guardian, or responsible adult, approved the pupil's enrollment in a county community school, subject to the following:

(1) A pupil shall not be enrolled in a county community school pursuant to this subdivision unless the school district determines that the placement will promote the educational interests of the pupil and the county community school has space available to enroll the pupil.

(2) A parent, guardian, or responsible adult of a pupil enrolled in a county community school pursuant to this subdivision may rescind the request for the placement, and the pupil shall be immediately reenrolled in the school that the pupil attended at the time of the referral, or, with the consent of the parent, guardian, or responsible adult, another appropriate school.

(e) The procedures outlined in subdivisions (b) to (e), inclusive, of Section 51225.2 govern the transfer of credits, records, including special education records, and grades required pursuant to subdivision (a) of Section 48645.5 and Section 49068 when the pupil transfers to and from the county community school.

(f) For purposes of this section, "geographically accessible" means that the pupil can reasonably travel to and from the school and is able to pay for any transportation costs that are above and beyond the costs to attend his or her school of residence or prior school, whichever is farther away.

SEC. 2. Section 1981.2 of the Education Code is repealed.

SEC. 3. Section 1981.5 is added to the Education Code, to read:

1981.5. (a) A pupil who is involuntarily enrolled in a county community school pursuant to subdivision (a) of, or subparagraph (A) of paragraph (1) or paragraph (3) of subdivision (c) of, Section 1981 shall have the right to reenroll in his or her former school or another comprehensive school immediately after being readmitted from the expulsion order pursuant to Section 48916 or court-ordered placement. Nothing in this section is intended to limit the school placement options that a school district may recommend for a pupil being readmitted.

(b) Consistent with the process and procedures set forth in Section 48916, only the governing board of the school district that issued the initial order or subsequent order to expel may extend the duration of an expelled pupil's placement in a county community school.

SEC. 4. Section 1983 of the Education Code is amended to read:

1983. (a) Pupils enrolled in county community schools shall be assigned to classes or programs deemed most appropriate for reinforcing or reestablishing educational development.

(b) These classes or programs may include, but need not be limited to, basic educational skill development, on-the-job training, school credit recovery assistance, tutorial assistance, and individual guidance activities.

(c) To the extent that independent study is determined to satisfy the individually planned educational program described in subdivision (d) for a pupil attending a county community school, it shall meet all the requirements of Article 5.5 (commencing with Section 51745) of Chapter 5 of Part 28 of Division 4 of Title 2, including the requirement that entry into that program is voluntary.

(d) An individually planned educational program based upon an educational assessment shall be prescribed for each pupil.

(e) The course of study of a county community school shall be adopted by the county board of education and shall enable each pupil to continue academic work leading to the completion of a regular high school program.

(f) Pursuant to Part 30 (commencing with Section 56000) of Division 4 of Title 2 of this code, Chapter 33 (commencing with Section 1400) of Title 20 of the United States Code, and accompanying state and federal regulatory provisions, county boards of education operating county community schools shall ensure that assessments are administered in all areas of suspected disability and appropriate services and programs, as specified in a pupil's individualized education program, are provided.

(g) County boards of education operating county community schools shall ensure that appropriate services and programs designed to address the language needs of pupils identified as English learners are provided in compliance with all applicable state and federal laws and regulatory provisions.

SEC. 5. Section 48918 of the Education Code is amended to read:

48918. The governing board of each school district shall establish rules and regulations governing procedures for the expulsion of pupils. These procedures shall include, but are not necessarily limited to, all of the following:

(a) (1) The pupil shall be entitled to a hearing to determine whether the pupil should be expelled. An expulsion hearing shall be held within 30 schooldays after the date the principal or the superintendent of schools determines that the pupil has committed any of the acts enumerated in Section 48900, unless the pupil requests, in writing, that the hearing be postponed. The adopted rules and regulations shall specify that the pupil is entitled to at least one postponement of an expulsion hearing, for a period of not more than 30 calendar days. Any additional postponement may be granted at the discretion of the governing board of the school district.

(2) Within 10 schooldays after the conclusion of the hearing, the governing board of the school district shall decide whether to expel the pupil, unless the pupil requests in writing that the decision be postponed. If the hearing is held by a hearing officer or an administrative panel, or if the governing board of the school district does not meet on a weekly basis, the governing board of the school district shall decide whether to expel the pupil within 40 schooldays after the date of the pupil's removal from his or

her school of attendance for the incident for which the recommendation for expulsion is made by the principal or the superintendent of schools, unless the pupil requests in writing that the decision be postponed.

(3) If compliance by the governing board of the school district with the time requirements for the conducting of an expulsion hearing under this subdivision is impracticable during the regular school year, the superintendent of schools or the superintendent's designee may, for good cause, extend the time period for the holding of the expulsion hearing for an additional five schooldays. If compliance by the governing board of the school district with the time requirements for the conducting of an expulsion hearing under this subdivision is impractical due to a summer recess of governing board meetings of more than two weeks, the days during the recess period shall not be counted as schooldays in meeting the time requirements. The days not counted as schooldays in meeting the time requirements for an expulsion hearing because of a summer recess of governing board meetings shall not exceed 20 schooldays, as defined in subdivision (c) of Section 48925, and unless the pupil requests in writing that the expulsion hearing be postponed, the hearing shall be held not later than 20 calendar days before the first day of school for the school year. Reasons for the extension of the time for the hearing shall be included as a part of the record at the time the expulsion hearing is conducted. Upon the commencement of the hearing, all matters shall be pursued and conducted with reasonable diligence and shall be concluded without any unnecessary delay.

(b) Written notice of the hearing shall be forwarded to the pupil at least 10 calendar days before the date of the hearing. The notice shall include all of the following:

- (1) The date and place of the hearing.
- (2) A statement of the specific facts and charges upon which the proposed expulsion is based.
- (3) A copy of the disciplinary rules of the school district that relate to the alleged violation.
- (4) A notice of the parent, guardian, or pupil's obligation pursuant to subdivision (b) of Section 48915.1.
- (5) Notice of the opportunity for the pupil or the pupil's parent or guardian to appear in person or to be represented by legal counsel or by a nonattorney adviser, to inspect and obtain copies of all documents to be used at the hearing, to confront and question all witnesses who testify at the hearing, to question all other evidence presented, and to present oral and documentary evidence on the pupil's behalf, including witnesses. In a hearing in which a pupil is alleged to have committed or attempted to commit a sexual assault as specified in subdivision (n) of Section 48900 or to have committed a sexual battery as defined in subdivision (n) of Section 48900, a complaining witness shall be given five days' notice before being called to testify, and shall be entitled to have up to two adult support persons, including, but not limited to, a parent, guardian, or legal counsel, present during his or her testimony. Before a complaining witness testifies, support persons shall be

admonished that the hearing is confidential. This subdivision shall not preclude the person presiding over an expulsion hearing from removing a support person whom the presiding person finds is disrupting the hearing. If one or both of the support persons is also a witness, the provisions of Section 868.5 of the Penal Code shall be followed for the hearing. This section does not require a pupil or the pupil's parent or guardian to be represented by legal counsel or by a nonattorney adviser at the hearing.

(A) For purposes of this section, "legal counsel" means an attorney or lawyer who is admitted to the practice of law in California and is an active member of the State Bar of California.

(B) For purposes of this section, "nonattorney adviser" means an individual who is not an attorney or lawyer, but who is familiar with the facts of the case, and has been selected by the pupil or pupil's parent or guardian to provide assistance at the hearing.

(c) (1) Notwithstanding Section 35145, the governing board of the school district shall conduct a hearing to consider the expulsion of a pupil in a session closed to the public, unless the pupil requests, in writing, at least five days before the date of the hearing, that the hearing be conducted at a public meeting. Regardless of whether the expulsion hearing is conducted in a closed or public session, the governing board of the school district may meet in closed session for the purpose of deliberating and determining whether the pupil should be expelled.

(2) If the governing board of the school district or the hearing officer or administrative panel appointed under subdivision (d) to conduct the hearing admits any other person to a closed deliberation session, the parent or guardian of the pupil, the pupil, and the counsel of the pupil also shall be allowed to attend the closed deliberations.

(3) If the hearing is to be conducted at a public meeting, and there is a charge of committing or attempting to commit a sexual assault as defined in subdivision (n) of Section 48900 or to commit a sexual battery as defined in subdivision (n) of Section 48900, a complaining witness shall have the right to have his or her testimony heard in a session closed to the public when testifying at a public meeting would threaten serious psychological harm to the complaining witness and there are no alternative procedures to avoid the threatened harm, including, but not limited to, videotaped deposition or contemporaneous examination in another place communicated to the hearing room by means of closed-circuit television.

(d) Instead of conducting an expulsion hearing itself, the governing board of the school district may contract with the county hearing officer, or with the Office of Administrative Hearings pursuant to Chapter 14 (commencing with Section 27720) of Part 3 of Division 2 of Title 3 of the Government Code and Section 35207 of this code, for a hearing officer to conduct the hearing. The governing board of the school district may also appoint an impartial administrative panel of three or more certificated persons, none of whom is a member of the governing board of the school district or employed on the staff of the school in which the pupil is enrolled. The

hearing shall be conducted in accordance with all of the procedures established under this section.

(e) Within three schooldays after the hearing, the hearing officer or administrative panel shall determine whether to recommend the expulsion of the pupil to the governing board of the school district. If the hearing officer or administrative panel decides not to recommend expulsion, the expulsion proceedings shall be terminated and the pupil immediately shall be reinstated and permitted to return to the classroom instructional program from which the expulsion referral was made, unless the parent, guardian, or responsible adult of the pupil requests another school placement in writing. Before the placement decision is made by the parent, guardian, or responsible adult, the superintendent of schools or the superintendent's designee shall consult with school district personnel, including the pupil's teachers, and the parent, guardian, or responsible adult regarding any other school placement options for the pupil in addition to the option to return to his or her classroom instructional program from which the expulsion referral was made. If the hearing officer or administrative panel finds that the pupil committed any of the acts specified in subdivision (c) of Section 48915, but does not recommend expulsion, the pupil shall be immediately reinstated and may be referred to his or her prior school or another comprehensive school, or, pursuant to the procedures set forth in Section 48432.5, a continuation school of the school district. The decision not to recommend expulsion shall be final.

(f) (1) If the hearing officer or administrative panel recommends expulsion, findings of fact in support of the recommendation shall be prepared and submitted to the governing board of the school district. All findings of fact and recommendations shall be based solely on the evidence adduced at the hearing. If the governing board of the school district accepts the recommendation calling for expulsion, acceptance shall be based either upon a review of the findings of fact and recommendations submitted by the hearing officer or panel or upon the results of any supplementary hearing conducted pursuant to this section that the governing board of the school district may order.

(2) The decision of the governing board of the school district to expel a pupil shall be based upon substantial evidence relevant to the charges adduced at the expulsion hearing or hearings. Except as provided in this section, no evidence to expel shall be based solely upon hearsay evidence. The governing board of the school district or the hearing officer or administrative panel may, upon a finding that good cause exists, determine that the disclosure of either the identity of a witness or the testimony of that witness at the hearing, or both, would subject the witness to an unreasonable risk of psychological or physical harm. Upon this determination, the testimony of the witness may be presented at the hearing in the form of sworn declarations that shall be examined only by the governing board of the school district or the hearing officer or administrative panel. Copies of these sworn declarations, edited to delete the name and identity of the witness, shall be made available to the pupil.

(g) A record of the hearing shall be made. The record may be maintained by any means, including electronic recording, so long as a reasonably accurate and complete written transcription of the proceedings can be made.

(h) (1) Technical rules of evidence shall not apply to the hearing, but relevant evidence may be admitted and given probative effect only if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. A decision of the governing board of the school district to expel shall be supported by substantial evidence showing that the pupil committed any of the acts enumerated in Section 48900.

(2) In hearings that include an allegation of committing or attempting to commit a sexual assault as defined in subdivision (n) of Section 48900 or to commit a sexual battery as defined in subdivision (n) of Section 48900, evidence of specific instances, of a complaining witness' prior sexual conduct is to be presumed inadmissible and shall not be heard absent a determination by the person conducting the hearing that extraordinary circumstances exist requiring the evidence be heard. Before the person conducting the hearing makes the determination on whether extraordinary circumstances exist requiring that specific instances of a complaining witness' prior sexual conduct be heard, the complaining witness shall be provided notice and an opportunity to present opposition to the introduction of the evidence. In the hearing on the admissibility of the evidence, the complaining witness shall be entitled to be represented by a parent, guardian, legal counsel, or other support person. Reputation or opinion evidence regarding the sexual behavior of the complaining witness is not admissible for any purpose.

(i) (1) Before the hearing has commenced, the governing board of the school district may issue subpoenas at the request of either the superintendent of schools or the superintendent's designee or the pupil, for the personal appearance of percipient witnesses at the hearing. After the hearing has commenced, the governing board of the school district or the hearing officer or administrative panel may, upon request of either the county superintendent of schools or the superintendent's designee or the pupil, issue subpoenas. All subpoenas shall be issued in accordance with Sections 1985, 1985.1, and 1985.2 of the Code of Civil Procedure. Enforcement of subpoenas shall be done in accordance with Section 11455.20 of the Government Code.

(2) Any objection raised by the superintendent of schools or the superintendent's designee or the pupil to the issuance of subpoenas may be considered by the governing board of the school district in closed session, or in open session, if so requested by the pupil before the meeting. Any decision by the governing board of the school district in response to an objection to the issuance of subpoenas shall be final and binding.

(3) If the governing board of the school district, hearing officer, or administrative panel determines, in accordance with subdivision (f), that a percipient witness would be subject to an unreasonable risk of harm by testifying at the hearing, a subpoena shall not be issued to compel the personal attendance of that witness at the hearing. However, that witness may be compelled to testify by means of a sworn declaration as provided for in subdivision (f).

(4) Service of process shall be extended to all parts of the state and shall be served in accordance with Section 1987 of the Code of Civil Procedure. All witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the state or any political subdivision of the state, shall receive fees, and all witnesses appearing pursuant to subpoena, except the parties, shall receive mileage in the same amount and under the same circumstances as prescribed for witnesses in civil actions in a superior court. Fees and mileage shall be paid by the party at whose request the witness is subpoenaed.

(j) Whether an expulsion hearing is conducted by the governing board of the school district or before a hearing officer or administrative panel, final action to expel a pupil shall be taken only by the governing board of the school district in a public session. Written notice of any decision to expel or to suspend the enforcement of an expulsion order during a period of probation shall be sent by the superintendent of schools or his or her designee to the pupil or the pupil's parent or guardian and shall be accompanied by all of the following:

(1) Notice of the right to appeal the expulsion to the county board of education.

(2) Notice of the education alternative placement to be provided to the pupil during the time of expulsion.

(3) Notice of the obligation of the parent, guardian, or pupil under subdivision (b) of Section 48915.1, upon the pupil's enrollment in a new school district, to inform that school district of the pupil's expulsion.

(k) (1) The governing board of the school district shall maintain a record of each expulsion, including the cause for the expulsion. Records of expulsions shall be nonprivileged, disclosable public records.

(2) The expulsion order and the causes for the expulsion shall be recorded in the pupil's mandatory interim record and shall be forwarded to any school in which the pupil subsequently enrolls upon receipt of a request from the admitting school for the pupil's school records.

SEC. 6. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.