

# **Da Vinci Schools**

## ***Policy and Procedures***

### **SUSPENSION AND EXPULSION**

The Board of Trustees is committed to ensuring that all students have equal access to educational opportunities in a safe, supportive, and positive school environment that is conducive to learning and to developing students' sense of self-discipline and responsibility. The Board believes that high expectations for student behavior, use of effective school and classroom management strategies, provision of appropriate intervention and support, and involvement of parents/guardians can minimize the need for disciplinary measures that exclude students from instruction as a means for correcting student misbehavior.

The Chief Executive Officer or designee shall develop effective, age-appropriate strategies for maintaining a positive school climate and correcting student misbehavior in Da Vinci Schools. The strategies shall focus on providing students with needed supports; communicating clear, appropriate, and consistent expectations and consequences for student conduct; and ensuring equity and continuous improvement in the implementation of discipline policies and practices.

Disciplinary measures that may result in loss of instructional time or cause students to be disengaged from school, such as detention, suspension, and expulsion, shall be imposed only when required or permitted by law or when other means of correction have been documented to have failed.

Each school may develop disciplinary rules to meet its particular needs consistent with law and Board policies and procedures, and shall be included in the comprehensive school safety plan and parent/student handbook. (Education Code 32282)

At all times, the safety of students and staff and the maintenance of an orderly school environment shall be priorities in determining appropriate discipline. When misconduct occurs, staff shall attempt to identify the causes of the student's behavior and implement appropriate discipline. When choosing between different disciplinary strategies, staff shall consider the effect of each option on the student's health, well-being, and opportunity to learn.

Staff shall enforce disciplinary rules, including rules concerning suspension and expulsion of students, fairly, consistently, and in accordance with Da Vinci Schools' nondiscrimination policies. The Chief Executive Officer or designee shall provide professional development as necessary to assist staff in developing the skills needed to effectively implement appropriate disciplinary strategies, including procedures for the suspension and expulsion of students.

Da Vinci Schools' goals for improving school climate, based on suspension and expulsion rates, surveys of schools, staff, and parents/guardians regarding their sense of school safety, and other local measures, shall be included in the local control and accountability plan, as required by law. (Education Code 52060)

## Alternatives to Suspension

To intervene in student behavior, Da Vinci Schools has a progressive discipline plan in place at each of its schools. This plan is included in the Parent/Student Handbook. The Handbook also includes a School-Parent-Student Compact that outlines how each stakeholder shall share the responsibility for improved student academic achievement and the means by which the school and parents/guardians will develop a partnership to help students achieve high academic and behavior standards. The discipline plan includes information about student expectations and progression of disciplinary procedures from day-to-day discipline to suspension, expulsion, and involuntary removal.

The following are alternatives to be considered before suspending a student:

1. Conference between staff, parent/guardian, and the student
2. Parent/guardian shadowing
3. Mentorship (peer/teacher)
4. Written assignment, research, or presentation reflecting on the student's behavior
5. Referral to a school counselor, psychologist, social worker, case manager, or other school support service personnel for case management and counseling
6. Intervention-related teams to assess student behavior, and develop and implement an individualized behavior plan in partnership with the student and his/her parent/guardian
7. Referral for a comprehensive psychosocial or psychoeducational assessment, including for purposes of creating an IEP or Section 504 Plan
8. Enrollment in a program for teaching prosocial behavior or anger management
9. Participation in a restorative justice program
10. A positive behavior support approach with tiered interventions that occur during the school day
11. Out-of-school programs that address specific behavioral issues or expose students to positive activities and behaviors
12. Volunteer work or community service
13. Loss of privileges
14. Saturday school
15. In-school suspension

### Prohibited Use of Disciplinary Action

School personnel and volunteers shall not allow any disciplinary action taken against a student to result in the denial or delay of a school meal. (Education Code 49557.5)

Seclusion and behavior restraints of any form shall not be imposed as a means of coercion, discipline, convenience, or retaliation by any school personnel. Seclusion and behavior restraints may be used only to control behavior that poses a clear and present danger of serious physical harm to the student or others that cannot be immediately prevented by a response that is less restrictive. (Education Code 49005.2, 49005.4)

### Scope and Purpose of Suspensions and Expulsions

Suspension means removal of a student from ongoing instruction for adjustment purposes.

Expulsion means the removal of a student from the immediate supervision and control, or the general supervision, of school personnel.

A student may be suspended or expelled when his/her behavior is related to a school activity or school attendance occurring at a Da Vinci school or at any other school, regardless of when it occurs, including, but not limited to the following:

1. While on school grounds;
2. While going to or coming from school;
3. During the lunch period, whether on or off the school campus; or
4. During, going to, or coming from a school-sponsored activity.

### Grounds for Suspension: Discretionary Offenses

Students may be suspended for any of the following acts when it is determined the student:

- (1) Caused, attempted to cause, or threatened to cause physical injury to another person.
- (2) Willfully used force or violence upon the person of another, except in self-defense.
- (3) Possessed, sold, or otherwise furnished an object that could be deemed dangerous, unless, in the case of possession of an object of this type, the student had obtained written permission to possess the item from a certificated school employee, which is concurred in by the principal or his/her designee.
- (4) Unlawfully possessed, used, sold, or otherwise furnished, or been under the influence of, a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind.
- (5) Unlawfully offered, arranged, or negotiated to sell a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic

beverage, or an intoxicant of any kind, and either sold, delivered, or otherwise furnished to a person another liquid, substance, or material and represented the liquid, substance, or material as a controlled substance, alcoholic beverage, or intoxicant.

- (6) Committed or attempted to commit robbery or extortion.
- (7) Caused or attempted to cause damage to school property or private property.
- (8) Stole or attempted to steal school property or private property.
- (9) Possessed, smoked, or used tobacco, or products containing tobacco or nicotine products, including, but not limited to, cigarettes, cigars, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets, and betel. However, this section does not prohibit the use or possession by a student of his/her own prescription products.
  - (A) "Smoking" has the same meaning as in subdivision (c) of Section 22950.5 of the Business and Professions Code
  - (B) "Tobacco product" means a product or device as defined in subdivision (d) of Section 22950.5 of the Business and Professions Code.
- (10) Committed an obscene act or engaged in habitual profanity or vulgarity.
- (11) Unlawfully possessed or unlawfully offered, arranged, or negotiated to sell drug paraphernalia, as defined in Section 11014.5 of the Health and Safety Code.
- (12) Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties.
- (13) Knowingly received stolen school property or private property.
- (14) Possessed an imitation firearm. "Imitation firearm" means a replica of a firearm that is so substantially similar in physical properties to an existing firearm as to lead a reasonable person to conclude that the replica is a firearm.
- (15) Harassed, threatened, or intimidated a student who is a complaining witness or a witness in a school disciplinary proceeding for purposes of either preventing that student from being a witness and/or retaliating against that student for being a witness.
- (16) Unlawfully offered, arranged to sell, negotiated to sell, or sold the prescription drug Soma.
- (17) Engaged in, or attempted to engage in, hazing. "Hazing" means a method of initiation or preinitiation into a student organization or body, whether or not the organization or body is officially recognized by an educational institution, which is likely to cause serious bodily injury or personal degradation or disgrace resulting in physical or mental harm to a former, current, or prospective student. "Hazing" does not include athletic events or school-sanctioned events.

- (18) Aided or abetted, as defined in Section 31 of the Penal Code, the infliction or attempted infliction of physical injury to another person.
- (19) Committed sexual harassment as defined in Section 212.5 of the Education Code. The conduct must be considered by a reasonable person of the same gender as the victim to be sufficiently severe or pervasive to have a negative impact upon the individual's academic performance or to create an intimidating, hostile, or offensive educational environment.
- (20) Caused, attempted to cause, threatened to cause, or participated in an act of, hate violence, as defined in subdivision (e) of Section 233 of the Education Code.
- (21) Intentionally engaged in harassment, threats, or intimidation, directed against Da Vinci Schools personnel or students, that is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting classwork, creating substantial disorder, and invading the rights of either school personnel or students by creating an intimidating or hostile educational environment.
- (22) Made terroristic threats against school officials and/or school property. "Terroristic threat" includes any written or oral statement by a person who willfully threatens to commit a crime which will result in death, great bodily injury to another person, or property damage in excess of one thousand dollars (\$1,000), with the specific intent that the statement is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his/her own safety or for his/her immediate family's safety, or for the protection of Da Vinci Schools property, or the personal property of the person threatened or his/her immediate family.
- (23) Engaged in an act of bullying. The following terms have the following meanings:
  - (A) "Bullying" means any severe or pervasive physical or verbal act or conduct, including communications made in writing or by means of an electronic act, and including one or more acts committed by a student or group of students as described in #19-21 above, directed toward one or more students that has or can be reasonably predicted to have the effect of one or more of the following:
    - (i) Placing a reasonable student in fear of harm his/her person or property.
    - (ii) Causing a reasonable student to experience a substantially detrimental effect on his/her physical or mental health.
    - (iii) Causing a reasonable student to experience substantial interference with his/her academic performance.
    - (iv) Causing a reasonable student to experience substantial interference with his/her ability to participate in or benefit from the services, activities, or privileges provided by a school.

- (B) “Electronic act” means the creation or transmission originated on or off the schoolsite, by means of an electronic device, including, but not limited to, a telephone, wireless telephone, or other wireless communication device, computer, or pager, of a communication, including, but not limited to, any of the following:
- (i) A message, text, sound, video, or image.
  - (ii) A post on a social network Internet Web site, including, but not limited to:
    - (a) Posting to or creating a burn page. “Burn page” means an Internet Web site created for the purpose of having one or more of the effects listed in paragraph (A).
    - (b) Creating a credible impersonation of another actual student for the purpose of having one or more of the effects listed in paragraph (A). “Credible impersonation” means to knowingly and without consent impersonate a student for the purpose of bullying the student and such that another student would reasonably believe, or has reasonably believed, that the student was or is the student who was impersonated.
    - (c) Creating a false profile for the purpose of having one or more of the effects listed in paragraph (A). “False profile” means a profile of a fictitious student or a profile using the likeness or attributes of an actual student other than the student who created the false profile.
  - (iii) An act of cyber sexual bullying.
    - (a) “Cyber sexual bullying” means the dissemination of, or the solicitation or incitement to disseminate, a photograph or other visual recording by a student to another student or to school personnel by means of an electronic act that has or can be reasonably predicted to have one or more of the effects described in paragraph (A). The photograph or other visual recording must include the depiction of a nude, semi-nude, or sexually explicit photograph or other visual recording of a minor where the minor is identifiable from the photograph, visual recording, or other electronic act.
    - (b) “Cyber sexual bullying” does not include a depiction, portrayal, or image that has any serious literary, artistic, educational, political, or scientific value or that involves athletic events or school-sanctioned activities.
- (C) An electronic act shall not constitute pervasive conduct solely on the basis that it has been transmitted on the Internet or is currently posted on the Internet.
- (D) “Reasonable student” means a student, including, but not limited to, an exceptional needs student, who exercises average care, skill, and judgment in conduct for a person of his/her age, or for a person of his/her age with his/her exceptional needs.

### Grounds for Suspension: Non-Discretionary Offenses

A student shall be suspended when there is evidence that the lives, safety or health of other students and/or school personnel are otherwise in clear, present, and continuing jeopardy or danger as a result of any of the following acts committed by the student:

- (1) Caused serious physical injury to another person, except in self-defense.
- (2) Committed assault or battery, as defined in Sections 240 and 242 of the Penal Code, upon any school employee.
- (3) Possessed, sold, or otherwise furnished a firearm, knife, explosive, or other dangerous object of no reasonable use to the pupil.
- (4) Brandished a knife at another person.
- (5) Committed robbery or extortion.
- (6) Unlawful possession of any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code that is more than one avoirdupois ounce of marijuana, and/or the possession of the controlled substance is not the first offense of this nature.
- (7) Unlawful sale of a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.
- (8) Unlawfully possessed, used, sold, or otherwise furnished, or been under the influence of an alcoholic beverage, or an intoxicant of any kind.
- (9) Committed or attempted to commit a sexual assault as defined in Section 261, 266c, 286, 287, 288, or 289 of the Penal Code or committed a sexual battery as defined in Section 243.4 of the Penal Code.

### Authority to Suspend

Only the principal or designee(s) may suspend a student from school. The “designee” is one or more administrators specifically designated by the principal, in writing, to assist with disciplinary procedures.

The principal may, in writing, also designate a certificated employee as a secondary designee to assist with disciplinary procedures when no other administrator is at the schoolsite. The principal may designate only one certificated person at a time.

### Informal Conference

Suspension shall be preceded by a conference conducted by the principal or designee with the student and his/her parent/guardian and, whenever practical, the teacher, supervisor or school employee who referred the student to the principal. The conference may be omitted if the principal

or designee determines that an emergency situation exists. An “emergency situation” involves a clear and present danger to the lives, safety or health of students or school personnel. If a student is suspended without this conference, both the parent/guardian and student shall be notified of the student’s right to return to school for the purpose of a conference. This conference shall be held within two (2) school days, unless the student waives this right or is physically unable to attend for any reason, including, but not limited to, incarceration or hospitalization. The conference shall then be held as soon as the student is physically able to return to school for the conference.

At the conference, the student shall be:

1. Informed, orally or in writing, of the charges against him/her, including the other means of correction that were attempted before the suspension.
2. Provided with an explanation of the evidence that supports the charges.
3. Given the opportunity to present his/her side of the story.

#### Notice to Parents/Guardians of the Suspension

At the time of suspension, the principal or designee shall make a reasonable effort to contact the parent/guardian by telephone or in person. Whenever a student is suspended, the parent/guardian shall be notified in writing of the suspension. This notice shall state the specific offense(s) committed by the student and indicate the date and time when the student may return to school. If school officials wish to ask the parent/guardian to confer regarding matters pertinent to the suspension, the notice will request that the parent/guardian respond to such requests without delay.

No penalties may be imposed on a student for failure of the student’s parent/guardian to attend a conference with school officials. Reinstatement of the suspended student shall not be contingent upon attendance by the student’s parent/guardian at the conference.

#### Suspension Time Limits

A student shall not be suspended from school for more than five (5) consecutive school days, and not more than twenty (20) school days in any school year. These restrictions on the number of days of suspension do not apply when the suspension is extended pending an expulsion.

A student with an IEP or Section 504 Plan may be suspended from school in the same manner as all other students. However, after ten (10) days of suspension in the same school year, where the student is removed from his/her current placement, a manifestation determination meeting must be held with a team comprised of Da Vinci Schools, the parent/guardian, and relevant persons to review the student’s IEP or Section 504 Plan, any teacher observations, and any relevant information provided by the parent/guardian to determine if the conduct was: (20 USC 1415(k)(1); 34 CFR 300.530, 300.536)

1. Caused by, or had a direct and substantial relationship to, the student’s disability; or
2. The direct result of Da Vinci Schools’ failure to implement the IEP or Section 504 Plan.



## Suspension Appeals

A parent/guardian may appeal a suspension within five (5) school days from the date the suspension was issued. The request is to be submitted to the principal to correct or remove any information (regarding the incident and circumstances that resulted in the suspension) recorded in the student's record which the student or parent/guardian alleges to be any of the following:

1. Inaccurate.
2. An unsubstantiated personal conclusion or inference.
3. A conclusion or inference outside of the observer's area of competence.
4. Not based on the personal observation of a named person with the time and place of the observation noted.
5. Misleading.
6. In violation of the privacy or other rights of the student.

Within thirty (30) days of receipt of an appeal, a neutral officer or a hearing panel shall meet with the student and parent/guardian and any pertinent school personnel. A hearing panel shall be composed of the following persons, provided that the parent/guardian or adult student has given written consent to release information from the student's records to the members of the panel so convened: a school administrator, a certificated employee, and a non-certificated employee – none of whom are members of the Board or employed on the staff of the school in which the student is enrolled.

If the neutral officer or hearing panel sustains any or all of the allegations, the principal shall be ordered to correct or remove and destroy the information regarding the incident and circumstances that resulted in the suspension from the student's records. If the neutral officer or hearing panel upholds the suspension, the matter is closed. The parent/guardian or student has the right to include in the student's record a written statement or response concerning the disciplinary action.

## Access to Education during the Period of Suspension

For suspensions that are not pending an expulsion hearing, the principal or designee shall make arrangements to provide the student with classroom material and current assignments to be completed at home during the period of suspension.

## Grounds for Expulsion: Discretionary Offenses

The principal may recommend the expulsion of a student for any of the following acts, unless the principal determines that expulsion should not be recommended under the circumstances or that an alternative means of correction could appropriately address the conduct:

- (1) Caused, attempted to cause, or threatened to cause physical injury to another person.

- (2) Willfully used force or violence upon the person of another, except in self-defense.
- (3) Possessed, sold, or otherwise furnished an object that could be deemed dangerous, unless, in the case of possession of an object of this type, the student had obtained written permission to possess the item from a certificated school employee, which is concurred in by the principal or his/her designee.
- (4) Unlawfully possessed, used, sold, or otherwise furnished, or been under the influence of, a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind.
- (5) Unlawfully offered, arranged, or negotiated to sell a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind, and either sold, delivered, or otherwise furnished to a person another liquid, substance, or material and represented the liquid, substance, or material as a controlled substance, alcoholic beverage, or intoxicant.
- (6) Committed or attempted to commit robbery or extortion.
- (7) Caused or attempted to cause damage to school property or private property.
- (8) Stole or attempted to steal school property or private property.
- (9) Possessed, smoked, or used tobacco, or products containing tobacco or nicotine products, including, but not limited to, cigarettes, cigars, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets, and betel. However, this section does not prohibit the use or possession by a student of his/her own prescription products.
  - (A) "Smoking" has the same meaning as in subdivision (c) of Section 22950.5 of the Business and Professions Code
  - (B) "Tobacco product" means a product or device as defined in subdivision (d) of Section 22950.5 of the Business and Professions Code.
- (10) Committed an obscene act or engaged in habitual profanity or vulgarity.
- (11) Unlawfully possessed or unlawfully offered, arranged, or negotiated to sell drug paraphernalia, as defined in Section 11014.5 of the Health and Safety Code.
- (12) Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties.
- (13) Knowingly received stolen school property or private property.
- (14) Possessed an imitation firearm. "Imitation firearm" means a replica of a firearm that is so substantially similar in physical properties to an existing firearm as to lead a reasonable person to conclude that the replica is a firearm.

- (15) Harassed, threatened, or intimidated a student who is a complaining witness or a witness in a school disciplinary proceeding for purposes of either preventing that student from being a witness and/or retaliating against that student for being a witness.
- (16) Unlawfully offered, arranged to sell, negotiated to sell, or sold the prescription drug Soma.
- (17) Engaged in, or attempted to engage in, hazing. “Hazing” means a method of initiation or preinitiation into a student organization or body, whether or not the organization or body is officially recognized by an educational institution, which is likely to cause serious bodily injury or personal degradation or disgrace resulting in physical or mental harm to a former, current, or prospective student. “Hazing” does not include athletic events or school-sanctioned events.
- (18) Aided or abetted, as defined in Section 31 of the Penal Code, the infliction or attempted infliction of physical injury to another person.
- (19) Committed sexual harassment as defined in Section 212.5 of the Education Code. The conduct must be considered by a reasonable person of the same gender as the victim to be sufficiently severe or pervasive to have a negative impact upon the individual’s academic performance or to create an intimidating, hostile, or offensive educational environment.
- (20) Caused, attempted to cause, threatened to cause, or participated in an act of, hate violence, as defined in subdivision (e) of Section 233 of the Education Code.
- (21) Intentionally engaged in harassment, threats, or intimidation, directed against Da Vinci Schools personnel or students, that is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting classwork, creating substantial disorder, and invading the rights of either school personnel or students by creating an intimidating or hostile educational environment.
- (22) Made terroristic threats against school officials and/or school property. “Terroristic threat” includes any written or oral statement by a person who willfully threatens to commit a crime which will result in death, great bodily injury to another person, or property damage in excess of one thousand dollars (\$1,000), with the specific intent that the statement is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his/her own safety or for his/her immediate family’s safety, or for the protection of Da Vinci Schools property, or the personal property of the person threatened or his/her immediate family.
- (23) Engaged in an act of bullying. The following terms have the following meanings:
  - (A) “Bullying” means any severe or pervasive physical or verbal act or conduct, including communications made in writing or by means of an electronic act, and including one or more acts committed by a student or group of students as described in #19-21 above,

directed toward one or more students that has or can be reasonably predicted to have the effect of one or more of the following:

- (i) Placing a reasonable student in fear of harm his/her person or property.
  - (ii) Causing a reasonable student to experience a substantially detrimental effect on his/her physical or mental health.
  - (iii) Causing a reasonable student to experience substantial interference with his/her academic performance.
  - (iv) Causing a reasonable student to experience substantial interference with his/her ability to participate in or benefit from the services, activities, or privileges provided by a school.
- (B) “Electronic act” means the creation or transmission originated on or off the schoolsite, by means of an electronic device, including, but not limited to, a telephone, wireless telephone, or other wireless communication device, computer, or pager, of a communication, including, but not limited to, any of the following:
- (i) A message, text, sound, video, or image.
  - (ii) A post on a social network Internet Web site, including, but not limited to:
    - (a) Posting to or creating a burn page. “Burn page” means an Internet Web site created for the purpose of having one or more of the effects listed in paragraph (A).
    - (b) Creating a credible impersonation of another actual student for the purpose of having one or more of the effects listed in paragraph (A). “Credible impersonation” means to knowingly and without consent impersonate a student for the purpose of bullying the student and such that another student would reasonably believe, or has reasonably believed, that the student was or is the student who was impersonated.
    - (c) Creating a false profile for the purpose of having one or more of the effects listed in paragraph (A). “False profile” means a profile of a fictitious student or a profile using the likeness or attributes of an actual student other than the student who created the false profile.
  - (iii) An act of cyber sexual bullying.
    - (a) “Cyber sexual bullying” means the dissemination of, or the solicitation or incitement to disseminate, a photograph or other visual recording by a student to another student or to school personnel by means of an electronic act that has or can be reasonably predicted to have one or more of the effects described in paragraph (A). The photograph or other visual recording must include the depiction of a nude, semi-nude, or sexually explicit photograph or other visual

recording of a minor where the minor is identifiable from the photograph, visual recording, or other electronic act.

(b) “Cyber sexual bullying” does not include a depiction, portrayal, or image that has any serious literary, artistic, educational, political, or scientific value or that involves athletic events or school-sanctioned activities.

(C) An electronic act shall not constitute pervasive conduct solely on the basis that it has been transmitted on the Internet or is currently posted on the Internet.

(D) “Reasonable student” means a student, including, but not limited to, an exceptional needs student, who exercises average care, skill, and judgment in conduct for a person of his/her age, or for a person of his/her age with his/her exceptional needs.

Both the recommendation and order to expel a student for committing any of the acts listed above must be based on a finding of one or both of the following:

1. Other means of correction are not feasible or have repeatedly failed to bring about proper conduct.
2. Due to the nature of the act, the presence of the student causes a continuing danger to the physical safety of the student or others.

#### Grounds for Expulsion: Mandatory Offenses

The principal shall recommend expulsion of a student that is determined to have committed any of the following acts:

1. Possessed, sold, or otherwise furnished a firearm. The act of possessing an imitation firearm, as defined above, is not an offense for which expulsion is mandatory.
2. Brandished a knife at another person.
3. Unlawful sale of a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.
4. Committed or attempted to commit a sexual assault as defined in Section 261, 266c, 286, 287, 288, or 289 of the Penal Code or committed a sexual battery as defined in Section 243.4 of the Penal Code.
5. Possessed an explosive.

#### Extension of Suspension

Upon a recommendation for expulsion, the student and parent/guardian will be invited to a meeting with the principal to determine if the suspension should be extended, beyond five (5) days, pending an expulsion hearing. That determination shall be based on a finding that either the student's presence would cause a danger to persons or property or a threat of disrupting the instructional process.

If a student is a foster youth, as defined in Section 48853.5 of the Education Code, the principal or designee shall also invite the student's attorney and appropriate representative of the county child welfare agency to participate in the extension of suspension meeting

### Authority to Expel

Only the principal can recommend the expulsion of a student from Da Vinci Schools, and only the Administrative Hearing Panel ("Panel") may order the expulsion following a hearing before it. The Panel shall include three or more certificated persons – none of whom are members of the Board or employed on the staff of the school in which the student is enrolled – that are familiar with the state and federal laws governing the suspension and expulsion process. Panel members may include teachers, school administrators, Chiefs or Directors from Da Vinci Schools, one of whom shall be identified as the presiding officer. The Chief Executive Officer or designee shall be responsible for assembling the Panel that will hear and determine the outcome of each expulsion matter. The Panel's decision may be appealed to the Governing Board of Da Vinci Schools.

### Notice of Expulsion Hearing

Written notice of the hearing shall be forwarded to the student and the student's parent/guardian at least ten (10) calendar days before the date of the hearing. The notice shall include all of the following:

1. The date, time, and place of the hearing.
2. A statement of specific facts and charges upon which the proposed expulsion is based.
3. A copy of the school's disciplinary rules that relate to the alleged violation.
4. A statement of the student's or parent's/guardian's obligation to provide information about the student's status at the school to any other school district or school to which the student seeks enrollment.
5. The right to appear in person or to be represented by legal counsel or a non-attorney advisor. The right to inspect and obtain copies of all documents to be used at the hearing.
  - a) "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) "Non-attorney 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 student or parent/guardian to provide assistance at the hearing.
6. The right to confront and question all witnesses who testify at the hearing.
7. The right to question all evidence presented, and to present oral and documentary evidence on the student's behalf, including witnesses.

If a foster youth, as defined in Section 48853.5 of the Education Code, is recommended for expulsion, the notice of hearing must also be provided to the student's attorney and an appropriate representative of the county child welfare agency at least ten (10) days prior to the date of the hearing. The notice may be made using the most cost-effective method possible, which may include, but is not limited to, electronic mail or a telephone call.

If a homeless youth, as defined in Section 11434a(2), Title 42 of the United States Code is recommended for expulsion, the notice of hearing must also be provided to the Da Vinci School's designated homeless liaison at least ten (10) days prior to the date of the hearing. The notice may be made using the most cost-effective method possible, which may include, but is not limited to, electronic mail or a telephone call.

### Expulsion Hearing

Students recommended for expulsion are entitled to a hearing before the Panel, as described above, to determine whether the student should be expelled. The hearing shall be held within thirty (30) school days after the principal determines that the student has committed an expellable offense. The student is entitled to one postponement of an expulsion hearing, for a period of not more than thirty (30) calendar days. Any additional postponements may be granted at the discretion of the Chief Executive Officer or designee for good cause.

The hearing shall be conducted in a session closed to the public, unless the student submits a written request, at least five (5) days prior to the date of the hearing, to have the hearing conducted at a public meeting. Regardless of whether the expulsion hearing is conducted in closed or public session, the Panel may meet in closed session to deliberate and determine whether the student should be expelled.

While technical rules of evidence do not apply to expulsion hearings, evidence may be admitted and used as proof only if it is the kind of evidence on which reasonable persons can rely in the conduct of serious affairs.

A decision of the Panel to expel must be documented in its findings of fact based upon substantial evidence relevant to the charges presented at the hearing. No decision to expel shall be based solely on hearsay evidence, except when the Panel, upon finding that good cause exists, determines that the disclosure of either the identity of a witness and/or the testimony of that witness at the hearing 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 Panel. Copies of these sworn declarations, edited to delete the name and identity of the witness, shall be made available to the student.

If the Panel decides not to order the expulsion of a student who committed a discretionary offense, the student shall be immediately reinstated and permitted to return to his/her educational program at the school from which the expulsion referral originated.

If the Panel decides not to order the expulsion of a student who committed a non-discretionary offense, the student shall be immediately reinstated and may be referred to his/her prior school, or another school that serves the same grade level, if available.

## Expulsion Hearings Involving Allegations of Sexual Assault or Sexual Battery

In a hearing involving allegations of sexual assault or sexual battery, a complaining witness shall be provided with a copy of the applicable disciplinary rules and advised of his/her right to:

1. Receive five (5) days' notice before being called to testify at the hearing.
2. Have up to two adult support persons of his/her choosing (*i.e.*, parent/guardian, legal counsel) present in the hearing at the time he/she testifies.
3. Have the hearing closed during the time he/she testifies.

The following are procedures for all hearings involving allegations of sexual assault or sexual battery:

1. The hearing may be postponed for one school day in order to accommodate the special physical, mental, or emotional needs of the complaining witness.
2. A nonthreatening environment shall be provided for a complaining witness in order to better enable him/her to speak freely and accurately of the experiences that are the subject of the expulsion hearing, and to prevent discouragement of complaints.
3. A room separate from the hearing room must be provided for the complaining witness to use prior to and during breaks in the testimony.
4. The presiding officer:
  - a. Shall allow the complaining witness reasonable periods of relief from examination and cross-examination during which he/she may leave the hearing room.
  - b. May arrange the seating within the hearing room of those present in order to facilitate a less intimidating environment for the complaining witness.
  - c. May limit the time for taking the testimony of a complaining witness to the hours he/she is normally in school, if there is no good cause to take the testimony during other hours.
  - d. May permit one of the complaining witness's support persons to accompany him/her to the witness stand.
5. Before a complaining witness testifies, support persons shall be admonished that the hearing is confidential and may not be discussed with anyone not in attendance at the hearing. The presiding officer of the Panel may remove a support person whom he/she finds is disrupting the hearing. If one or both of the support persons is also a witness, the following provisions apply:
  - a. The school must present evidence that the person's presence is both desired by, and will be helpful to, the complaining witness.



- b. The presiding officer shall permit the person to stay unless it is established that there is a substantial risk that the testimony of the complaining witness would be influenced by the support person.
  - c. The presiding officer may remove a person from the hearing whom he/she believes is prompting, swaying, or influencing the witness.
  - d. The testimony of the support person shall be presented before the testimony of the complaining witness and the complaining witness shall be excluded from hearing room during that testimony.
6. 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 presiding officer 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.
  7. If the hearing is to be conducted at a public meeting, a complaining witness shall have the right to have his/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.

#### Record of Expulsion and Expulsion Hearing

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

The principal or designee shall maintain a record of each expulsion, including the expulsion order and the causes for the expulsion, in the student's mandatory interim record. The record shall be forwarded to any school in which the student subsequently enrolls upon receipt of a request from the new school for the student's records.

#### Written Notice to Expel

Within three (3) school days after the hearing, the Chief Executive Officer or designee shall send written notice of the Panel's decision to expel, including the findings of fact, to the student and parent/guardian. This notice shall also include the following:

1. The specific offense committed by the student.

2. A statement of the student's or parent's/guardian's obligation to inform any school which the student seeks to enroll of the student's expulsion.
3. The date when the student can be reviewed for readmission, and a description of the process by which readmission is conducted.
4. A copy of the rehabilitation plan
5. The education alternative placement to be provided to the student during the time of expulsion.

The Panel's decision shall be final.

#### Rehabilitation Plan

At the time of the expulsion order, the Panel shall establish a rehabilitation plan for the student, which may include, but is not limited to, periodic review as well as assessment at the time of review for readmission. The plan should include the specific conditions that the student must satisfy during the period of expulsion and can include improved academic performance, tutoring, special education assessments, job training, counseling, employment, community service, or other rehabilitative programs. The stipulated conditions should be reasonable for the student to meet based on his/her specific circumstances, address the act(s) for which the student was expelled, and not require a cost or fee to the student or parent/guardian. The student may not be required to enroll in a drug rehabilitation program without parental consent.

#### Placement

The Chief Executive Officer or designee shall be responsible for the appropriate interim placement of students pending the outcome of the expulsion proceedings and shall facilitate the placement of an expelled student. If a parent/guardian chooses a different placement not determined by Da Vinci Schools, the Chief Executive Officer or designee shall ensure that the student will be able to meet the conditions of the rehabilitation plan through that placement.

#### Period of Expulsion and Readmission

At the time of the expulsion order, the Panel shall set a date not more than one (1) calendar year from the date the expulsion occurred, when the student shall be reviewed for readmission to Da Vinci Schools. In determining the period of expulsion, the Panel shall consider the nature of the act that resulted in the student's expulsion, including, but not limited to, the severity and intent of the act, the student's specific circumstances, and the safety of the student and others.

Ten (10) calendar days prior to the date set for readmission, the principal or designee shall contact the expelled student at his/her last known address to schedule a readmission meeting with the Chief Executive Officer or designee. The student shall be asked to provide documentation of proof that he/she has satisfactorily met the conditions of the rehabilitation plan.

On the date set for readmission, the Chief Executive Officer or designee shall review the expulsion case, with or without the student, to determine whether the student has met the conditions for readmission and determine placement. If the student has met the conditions of the rehabilitation

plan and completes the readmission process, the student is reinstated and placed in an appropriate schoolsite. If certain conditions of the rehabilitation plan are not met, the Chief Executive Officer or designee has the discretion to waive those conditions due to mitigating circumstances or deny readmission until the student has satisfactorily met all the conditions of the plan. The Chief Executive Officer or designee may also deny readmission to a student if he/she finds that the student poses a danger to campus safety or to others.

A student who has been denied readmission shall either continue attendance at his/her placement during the period of expulsion or another educational program. The Chief Executive Officer or designee shall provide written notice to the expelled student and his/her parent/guardian describing the reason(s) for denying the student's readmittance into Da Vinci Schools, the educational placement during the extended period of expulsion, and the conditions for readmittance. The student shall be readmitted once he/she can provide the Chief Executive Officer or designee with proof that he/she has satisfactorily met all the conditions for readmittance.

### Expulsion Appeals

A parent/guardian may appeal an expulsion within five (5) school days from the date of the Expulsion Hearing. The request is to be submitted to the Chief Executive Officer or designee to correct or remove any information (regarding the incident and circumstances that resulted in the expulsion) recorded in the student's record which the student or parent/guardian alleges to be any of the following:

1. Inaccurate
2. An unsubstantiated personal conclusion or inference.
3. A conclusion or inference outside of the observer's area of competence.
4. Not based on the personal observation of a named person with the time and place of the observation noted.
5. Misleading.
6. In violation of the privacy or other rights of the student.

Within thirty (30) days of receipt of an appeal, the Governing Board shall meet with the student and parent/guardian and any pertinent school personnel. The parent/guardian or adult student must give written consent to release information from the student's records to the Governing Board. The Board shall meet in a closed meeting to hear the appeal, and report their decision in an open, public meeting. If the Governing Board sustains any or all of the allegations, the principal shall be ordered to correct or remove and destroy the information regarding the incident and circumstances that resulted in the expulsion from the student's records. If the Governing Board upholds the expulsion, the matter is closed. The Governing Board's decision is final. The parent/guardian or student has the right to include in the student's record a written statement or response concerning the disciplinary action.

## **Special Considerations: Suspension and Expulsion of Students with Disabilities**

### Notification of SELPA

Chief Executive Officer or designee shall immediately notify and coordinate with the SELPA the suspension or expulsion of any student with a disability or whom Da Vinci Schools or SELPA would be deemed to have knowledge of having a disability.

### Services During Suspension

Students suspended for more than ten (10) school days in a school year shall continue to receive services so as to enable the student to continue to participate in the general education curriculum; to progress toward meeting the goals set forth in the student's IEP or Section 504 Plan; and to receive, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications, that are designed to address the misconduct so that it does not recur. These services may be provided in an interim alternative educational setting.

### Procedural Safeguards/Manifestation Determination

Within five (5) school days of a recommendation for expulsion, and prior to the extension of suspension meeting, or any decision to change the placement of a student due to behavioral issues, Da Vinci Schools, the parent/guardian, and relevant members of the IEP or Section 504 Team ("Team") shall review all relevant information in the student's file, including the student's IEP or Section 504 Plan, any teacher observations, and any relevant information provided by the parents/guardians to determine: (20 USC 1415(k)(1)(E); 34 CFR 300.530)

1. If the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or
2. If the conduct in question was the direct result of the Da Vinci Schools' failure to implement the IEP or Section 504 Plan.

If the student is a foster youth, as defined in Section 48853.5 of the Education Code, and Da Vinci Schools has proposed a change of placement due to an act for which a decision to recommend expulsion is at the discretion of the principal, the student's attorney and an appropriate representative of the county child welfare agency shall be invited to participate in IEP or Section 504 team meeting that makes a manifestation determination. The invitation may be made using the most cost-effective method possible, which may include, but is not limited to, electronic mail or a telephone call. (Education Code 48915.5)

If the student is a homeless youth, as defined in Section 11434a(2) of Title 42 of the United States Code and Da Vinci Schools has proposed a change of placement due to an act for which a decision to recommend expulsion is at the discretion of the Principal, the designated homeless liaison for Da Vinci Schools shall be invited to participate in the IEP or Section 504 team meeting that makes a manifestation determination. The invitation may be made using the most cost-effective method possible, which may include, but is not limited to, electronic mail or a telephone call. (Education Code 48915.5)

If the Team determines that either of the above is applicable for the student, the conduct shall be determined to be a manifestation of the student's disability. In which case, the Team shall:

1. Conduct a functional behavioral assessment and implement a behavioral intervention plan for the student, provided that Da Vinci Schools had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement;
2. Develop a behavior intervention plan, or if a plan has already been developed, review and modify it, as necessary, to address the behavior; and
3. Return the student to the placement from which he/she was removed, unless the parent/guardian and Da Vinci Schools agree to a change of placement as part of the modification of the behavioral intervention plan.

If the Team determines that the behavior was not a manifestation of the student's disability and that the conduct in question was not a result of Da Vinci Schools' failure to implement the IEP or Section 504 Plan, then Da Vinci Schools may apply the relevant disciplinary procedures to students with disabilities in the same manner and for the same duration as the procedures would be applied to students without disabilities.

#### Due Process Appeals

The parent/guardian of a student with a disability who disagrees with any decision regarding placement or the manifestation determination, or Da Vinci Schools believes that maintaining the current placement of the student is substantially likely to result in injury to the student or to others, may request an expedited administrative hearing through the Special Education Unit of the Office of Administrative Hearings or by utilizing the dispute provisions of the Section 504 Policy and Procedures. (20 USC 1415(k)(3); 34 CFR 300.532)

When an appeal relating to the placement of the student or the manifestation determination has been requested by either the parent/guardian or Da Vinci Schools, the student shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the forty-five (45) school day time period provided for in an interim alternative educational setting, whichever occurs first, unless the parent/guardian and Da Vinci Schools agree otherwise. (20 USC 1415(k)(4); 34 CFR 300.533)

#### Special Circumstances

Da Vinci Schools may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates Da Vinci Schools' code of student conduct.

The principal or designee may remove a student to an interim alternative educational setting for not more than forty-five (45) days without regard to whether the behavior is determined to be a manifestation of the student's disability in cases where a student: (20 USC 1415(k)(1)(G); 34 CFR 300.530)

1. Carries or possesses a weapon, as defined in Section 930 of Title 18 of the United States Code, to or at school, on school premises, or to or at a school function;
2. Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function; or
3. Has inflicted serious bodily injury, as defined by Section 1415(k)(7)(D) of Title 20 of the United States Code, upon another person while at school, on school premises, or at a school function.

The student's interim alternative educational setting shall be determined by the student's IEP Team. (20 USC 1415(k)(1)(G); 34 CFR 300.531)

#### Procedures for Students Not Yet Eligible for Special Education Services

A student who has not been identified as an individual with disabilities pursuant to IDEIA and who has violated Da Vinci Schools' code of student conduct may assert the procedural safeguards granted under this policy only if Da Vinci Schools had knowledge that the student was disabled before the behavior occurred. (20 USC 1415(k)(5); 34 CFR 300.534)

Da Vinci Schools shall be deemed to have knowledge that the student had a disability if one of the following conditions exists:

1. The parent/guardian expressed concern, in writing, or orally if the parent/guardian does not know how to write or has a disability that prevents a written statement, to the supervisory or administrative personnel of the school, or to one of the student's teachers, that the student is in need of special education or related services;
2. The parent/guardian has requested an evaluation of the student pursuant to Section 1414(a)(1)(B) of Title 20 of the United States Code; or
3. The student's teacher, or other school personnel, has expressed specific concerns about a pattern of behavior demonstrated by the student, directly to the director of special education or to other supervisory personnel of Da Vinci Schools.

If Da Vinci Schools knew or should have known the student had a disability under any of the three (3) circumstances described above, the student may assert any of the protections available to IDEIA-eligible individual with disabilities, including the right to stay-put.

Da Vinci Schools shall not be deemed to have knowledge that the student had a disability if the parent/guardian has not allowed an evaluation, refused services, or if the student has been evaluated and determined to not be eligible. If Da Vinci Schools had no basis for knowledge of the student's disability, it shall proceed with the proposed discipline. Da Vinci Schools shall conduct an expedited evaluation if requested by the parent/guardian; the student shall remain in the education placement determined by Da Vinci Schools pending the results of the evaluation. (20 USC 1415(k)(5); 34 CFR 300.534)

Legal Reference:

BUSINESS AND PROFESSIONS CODE

22950.5 Smoking and tobacco products defined

CIVIL CODE

1714.1 Parental liability for child's misconduct

EDUCATION CODE

212.5 Sexual harassment

233 Hate violence

32280-32289 School safety plans

37223 Weekend classes

47600-46610 Charter schools

48853.5 Foster youth

48900-48927 Suspension and expulsion

48980 Parental notifications

49005-49006.4 Restraint and seclusion

49550-49564.5 Meals for needy students

52060-52077 Local control and accountability plan

56000 Special education; legislative findings and declarations

56320 Educational needs; requirements

56321 Development or revision of individualized education program

56329 Independent educational assessment

56340-56347 Individualized education program teams

HEALTH AND SAFETY CODE

11014.5 Drug paraphernalia

11053-11058 Controlled substance, standards and schedules

LABOR CODE

230.7 Employee taking time off to appear in school on behalf of a child

PENAL CODE

31 Aiding and abetting defined

240 Assault defined

242 Battery defined

243.2 Battery on school property

243.4 Sexual battery

245 Assault with a deadly weapon

245.6 Hazing

261 Rape defined

266c Unlawful sexual intercourse

286 Sodomy defined

287 Oral copulation

288 Lewd or lascivious acts with child under age 14

289 Penetration of genital or anal openings  
422.55 Hate crime defined  
626.2 Entry upon campus after written notice of suspension or dismissal without permission  
626.9 Gun-Free School Zone Act of 1995  
626.10 Dirks, daggers, knives, razors, or stun guns  
868.5 Supporting person; attendance during testimony of witness

#### CODE OF FEDERAL REGULATIONS

104.35 Evaluation and placement  
104.36 Procedural safeguards  
300.1-300.818 Assistance to states for the education of students with disabilities, especially:  
300.530-300.537 Discipline procedures

#### UNITED STATES CODE, TITLE 18

921 Firearm defined  
930 Weapons defined  
1365 Serious bodily injury defined

#### UNITED STATES CODE, TITLE 20

1412 State eligibility  
1415 Procedural safeguards  
7961 Gun-free schools

#### UNITED STATES CODE, TITLE 42

11432-11435 Education of homeless children and youths

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