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Student Discipline in Online Learning Environments

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As schools continue to be closed due to the COVID-19 pandemic, many teachers have relied on online learning environments to educate students. However, some students have resorted to trolling behaviors, including “zoombombing” online classes. “Zoombombing” refers to the unwanted intrusion of an online environment that causes disruption. Teachers and school administrators are faced with determining how to apply student disciplinary policies to address issues of “zoombombing” and other inappropriate conduct in these online learning platforms.

As a preliminary matter, it appears that mandatory expulsion under the “Big Five” offenses under Cal. Ed. Code Section 48915(c) may be inapplicable in online environments due to the lack of immediacy of harm. While Section 48915(c) states that mandatory expulsion must occur if any of the Big Five offenses occur at school “*or at a school activity off school grounds*”—and school administration can argue that Section 48915(c)’s Big Five offenses are applicable in online learning environments—the statute specifies the Big five offenses as mandatory expulsion criteria because of the immediacy and proximity of danger/harm to the pupil or to others. Indeed, as a matter of statutory construction, there is no secondary finding required for Section 48915(c)’s Big Five offenses because it is already built-in to the nature of these specified acts. *Compare* Cal. Ed. Code § 48915(b) (stating a student may be expelled for committing an act listed in Section 48915(a)(1) or Section 48900(a)–(e) if either “(1) Other means of correction are not feasible or have repeatedly failed to bring about proper conduct”; or “(2) Due to the nature of the act, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.”). This does not mean schools do not have jurisdiction to discipline for this conduct in an online learning environment under Section 48900 *et. seq.*, rather, this specifies that a mandatory recommendation for expulsion under Section 48915(c) is likely inconsistent with the legislative intent to address immediate danger in the learning environment.

When considering a suspension, school administrators should be careful to follow up with proper process under the Education Code and documentation, as a student’s due process rights are not waived in the online/distance learning context. Most districts have an Acceptable Use Agreement governing the use of electronic devices for education purposes. These agreements generally contain language that states whenever a student is found to have violated Board policy or the school district’s Acceptable Use Agreement, the principal or designee *may cancel or limit a student’s user privileges* or increase supervision of the student’s use of the district’s equipment and other technological resources, as appropriate. The Agreement also usually contains a provision that allows discipline and/or legal action in accordance with law and Board policy for

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inappropriate use. Suspension from the online platform in which the student violated the code of conduct may be an appropriate option, and students can be assigned other forms of learning opportunities during the period of their suspension, such as written or emailed materials.

Postponing a suspension to the next school year may not advance the purpose of a suspension, which is to advance a safe learning environment and bring about proper conduct.

Conferencing with parents/guardians is an important tool in a District's toolbox of student discipline during the COVID-19 pandemic. In the case of a suspension, conferencing with parents/guardians is critical in order to inform parents/guardians why their child is not permitted to engage in online learning for the period of the suspension.

As with all things discipline related, school district administrators must weigh all options in order to address and correct student misbehavior and protect the safety and well-being of other students. School district administrators are encouraged to discuss these options with their legal counsel.

If you need help with a student discipline matter or if you would like more information, please feel free to contact Leah Smith at lsmith@ghslaw.com or Martin Vigodnier at mvigodnier@ghslaw.com

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