

## SUSPENSION AND EXPULSION/DUE PROCESS

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## SUSPENSION AND EXPULSION DUE PROCESS

### 9.1 Discipline

A student identified as an individual with disabilities pursuant to the IDEA is subject to the same grounds for suspension and expulsion which apply to students without disabilities.

A student with a disability can be expelled for violation of school conduct codes only when certain procedural safeguards are followed.

If an action is contemplated regarding behavior resulting in consideration for expulsion or involving a removal that constitutes a change of placement, the parents must be notified of that decision no later than the date on which the decision to take that action is made.

Immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, the IEP team must meet to review the relationship between the child's disability and the behavior subject to the disciplinary action. (27 EC 48915.5)

### 9.2 Suspension

The superintendent or designee may suspend a student with a disability for up to **5 consecutive school days** for a single incident of misconduct and up to **20 school days in a school year**. However an additional 10 days is allowed for reassignment for purposes of readjustment.

The principal or designee shall monitor the number of days, including portions of days that students with valid IEPs have been suspended during the school year.

### **9.3 Services during Suspension**

Students suspended for more than 10 school days in a school year shall continue to receive special education and related services as specified on the IEP, during the period of suspension. This will enable the child to participate in the general curriculum and to progress toward meeting the goals in his/her IEP.

### **9.4 Transportation during Suspension**

If a student with disabilities is excluded from transportation, the student is entitled to be provided with an alternative form of transportation at no cost to the student or parent/guardian, provided that transportation is specified on the IEP.

### **9.5 Procedural Safeguards**

The following procedural safeguards shall apply when a student is suspended for more than 10 cumulative school days, when a student is placed in an interim alternative educational setting (IAES), or when a change of placement is contemplated. Not later than the date on which the decision to take action is made, the parents/guardians of the student shall be notified of the decision and provided the procedural safeguards notice.

### **9.6 Manifestation Determination**

Within 10 school days of any decision to change the placement of a child with a disability, because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the IEP team (as determined by the parent and the LEA) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

- (1) if the conduct in question was caused by, or had a direct and substantial relationship to the child's disability; or
- (2) if the conduct in question was the direct result of the LEA's failure to implement the IEP.

If the LEA, the parent, and relevant members of the IEP team determine that either of the above is applicable for the student, the conduct shall be determined to be a manifestation of the student's disability.

**9.6.A Determination that Behavior is a Manifestation**

In determining that the behavior is a manifestation of the student's disability, the IEP team must:

- (1) Conduct a functional behavioral assessment and implement a behavioral intervention plan if LEA has not conducted such assessment.
- (2) In the situation where a behavioral intervention plan has been developed, review behavioral intervention plan and modify if necessary to address the behavior; and
- (3) Except under special circumstances, return the student to the previous placement unless the parent and the LEA agree to a change of placement.

**9.6.B Determination that Behavior is NOT a Manifestation of the Disability**

If the team determines that the behavior was **not** a manifestation of the disability:

- (1) Student must continue to receive services to enable him/her to participate in the general curriculum and to progress toward meeting the goals in the IEP.
- (2) If appropriate, receive a functional behavioral assessment, behavior intervention services and/or modifications that are designed to address the behavior so that it does not recur.

(Refer to Chapter 16 for Manifestation Determination Form)

**9.7 45-day Removal to IAES (Special Circumstances)**

School personnel may remove a student to an interim alternative educational setting (IAES) for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability, in cases where a student:

- (1) Carries or possesses a weapon to or at school, on school premises, or at a school function under the jurisdiction of the LEA.
- (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 under the jurisdiction of the LEA; or

- (3) Has inflicted **serious** bodily injury upon another person while at school, on school premises, or at school function under the jurisdiction of a State or LEA.

The IAES shall be determined by the IEP Team.

**Definition of *Serious Bodily Injury***

Serious bodily injury means bodily injury which involves:

- (1) A substantial risk of death
- (2) Extreme physical pain
- (3) Protracted and obvious disfigurement; or
- (4) Protracted loss or impairment of the function of a bodily member, organ, or mental faculty. (18-U.S.C. 1365(h) (3))

**9.8 Services during 45–Day Placement**

A student who is removed from current placement to 45-day placement must:

- (1) Student must continue to receive services to enable him/her to participate in the general curriculum and to progress toward meeting the goals in the IEP.
- (2) Receive, *as appropriate*, a functional behavioral assessment, behavior intervention services and/or modifications that are designed to address the behavior so that it does not recur.

**9.9 Disciplinary Appeal Process**

If the parent disagrees with any decision regarding placement or manifestation determination, they may request an expedited hearing. If the LEA believes that maintaining the current placement could substantially result in injury to the child or others, the LEA may request an expedited hearing.

**9.10 Placement during Appeal Process**

When an appeal has been requested by either the parent or the LEA:

The student shall remain in the interim alternative educational setting (IAES) pending the decision of the administrative law judge (ALJ) until the expiration of the 45-day placement provided whichever occurs first, unless the State or LEA agree otherwise

**9.11 Expedited Hearing**

The State or LEA shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.

**9.12 Authority of Administrative Law Judge (ALJ)**

The ALJ shall hear, and make determination regarding an appeal request. In making the determination, the ALJ may order a change in placement of a student with a disability. In such situations, the ALJ may:

- (1) Return the student to the placement from which the he/she was removed;
- (2) Order a change in placement of the student to an appropriate interim alternative educational setting for not more than 45 days, if the current placement of the student is substantially likely to result in injury to self or others.

**9.13 Protections for Children Not Yet Eligible for Special Education and Related Services**

A student who has not been determined to be eligible for special education and related services and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided under IDEA if the LEA had knowledge that the student had a disability before the behavior that precipitated the disciplinary action occurred.

**9.13.A Basis of Knowledge**

A LEA shall be deemed to have knowledge that a child is a child with a disability if, before the behavior precipitated the disciplinary action occurred:

- (1) The parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate LEA, or a teacher of the child, that the child is in need of special education and related services.
- (2) The parent of the child has requested an evaluation of the child.
- (3) The teacher of the child, or other personnel of the LEA, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.

**9.13.B Exception**

An LEA shall not have been deemed to have knowledge that the child is a child with a disability if the parent of the child has not allowed an evaluation of the child or has refused services if the child has been evaluated and it was determined that the child was not a child with a disability.

**9.14 Conditions that Apply if No Basis of Knowledge**

- (1) If a LEA does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to disciplinary measures applied to children without disabilities, who engage in comparable behaviors.
- (2) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the LEA and information provided by the parents, the LEA shall provide special education and related services. Pending the results, the child shall remain in the educational placement determined by school authorities.



**SPECIAL EDUCATION REMOVALS FOR DISCIPLINARY PURPOSES**

Category 1	Category 2	Category 3	Category 4
Less Than 10 Days	More Than 10 Cumulative Days No Change In Placement	More Than 10 Cumulative Days Change In Placement	More Than 10 Consecutive Days
<p><b>Disciplinary Action:</b> Disabled student may be disciplined in the same manner as a non-disabled student. 34 C.F.R. § 300.530(d)</p> <p><b>Educational Services:</b> School district need only provide educational services to a disabled student if the services are offered to non-disabled students. 34 C.F.R. § 300.530(d)</p>	<p><b>Disciplinary Action:</b> Disabled student may be disciplined in the same manner as a nondisabled student.</p> <p><b>Educational Services:</b> On the 11th day of removal, school personnel must consult with at least one of the student's teachers to determine the extent to which special education services must be provided to enable the student to continue to participate in general education curriculum (although in a different setting) and progress toward meeting the goals delineated in the student's IEP. 34 C.F.R. § 300.530(d)(4)</p>	<p><b>Disciplinary Action:</b> If the behavior is not a manifestation of the student's disability, the student may be disciplined as a general education student. 20 U.S.C. § 1415(k)(1)(C); 34 C.F.R. § 300.530(c)</p> <p>If the behavior is a manifestation of the student's disability, the school district must conduct a functional behavioral assessment and implement a behavioral intervention plan (provided that the school district had not conducted such assessment prior to the determination before the behavior resulted in a change of placement), and return the student to the previous placement unless the school district and parent agree to a change of placement or the student is placed in an interim alternative educational setting. If student already has a behavioral intervention plan, the IEP team must review and modify it, as necessary, to address the behavior. 20 U.S.C. § 1415(k)(1)(F); 34 C.F.R. § 300.530(f)</p> <p><b>Educational Services:</b> On the 11th day of removal, the IEP team must decide on services to (1) enable the student to continue to participate in general education curriculum, (2) progress toward the IEP goals, and (3) receive a functional behavioral assessment, as appropriate, and behavioral intervention services and modifications. 20 U.S.C. § 1415(k)(1)(D); 34 C.F.R. § 300.530(b)(2)</p>	
	<p><b>Determine Whether Removal Constitutes Change in Placement:</b> School district must determine whether a series of removals constitutes a change in placement. Must consider the length of each removal, whether the behavior in each incident is substantially similar, total time removed, and proximity in time of removals. Must be determined on a case-by-case basis. 20 U.S.C. § 1415 (k)(1)(A); 34 C.F.R. §§ 300.530, 300.536</p> <p><b>Interim Alternative Educational Setting:</b> School officials may remove a student to an interim alternative educational setting for no more than 45 school days regardless of whether the behavior was a manifestation of the student's disability if the student:</p> <ol style="list-style-type: none"> <li>1. Carried or possessed a weapon on the way to or at school, on school premises, or to/or at a school function;</li> <li>2. Knowingly possessed or used illegal drugs, or sold or solicited the sale of a controlled substance, while at school, on school premises or at a school function; or</li> <li>3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function.</li> </ol> <p>The IEP team must determine the interim alternative education setting. 20 U.S.C. §§ 1415(k)(1)(G), 1415(k)(2); 34 C.F.R. § 300.530(g)</p>		
	<p><b>Manifestation Determination:</b> Within 10 days of the decision to change the student's placement for disciplinary reasons, the school district, parent, and relevant IEP team members must meet to determine whether the student's conduct was:</p> <ol style="list-style-type: none"> <li>1. Caused by, or had a direct and substantial relationship to, the student's disability; or</li> <li>2. The direct result of the school district's failure to implement the IEP.</li> </ol> <p>The parents and the school district determine who qualifies as "relevant IEP team members." The team conducting the manifestation determination must review all relevant information in the student's file, including the student's IEP, teacher observations, and any relevant information provided by the parent. 20 U.S.C. § 1415(k)(1)(E); 34 C.F.R. § 300.530(e)</p>		

## STUDENT DISCIPLINE

**Suspendable and Expellable Offenses**

Students may be suspended or recommended for expulsion if the student has committed one of the following offenses:

- Caused, attempted to cause, or threatened to cause physical injury to another person.
- Willfully used force or violence upon the person of another, except in self-defense.
- Possessed, sold, or otherwise furnished any firearm, knife, explosive, or other dangerous object.
- Unlawfully possessed, used, sold, or otherwise furnished, or been under the influence of, any controlled substance.
- Unlawfully offered, arranged, or negotiated to sell any controlled substance.
- Committed or attempted to commit robbery or extortion.
- Caused or attempted to cause damage to school or private property.
- Stole or attempted to steal school or private property.
- Possessed or used tobacco or any tobacco product.
- Committed an obscene act or habitual profanity.
- Unlawfully possessed or unlawfully offered, arranged, or negotiated to sell any drug paraphernalia.
- Disrupted school activities or otherwise willfully defied valid authority.
- Knowingly received stolen school or private property.
- Possessed an imitation firearm.
- Committed or attempted to commit a sexual assault or committed sexual battery.
- Harassed, threatened, or intimidated a pupil witness in order to prevent testimony or to retaliate for giving testimony.
- Unlawfully offered, arranged to sell, negotiated to sell, or sold the prescription drug Soma.
- Engaged in, or attempted to engage in, hazing.
- Engaged in an act of bullying, including, but not limited to, bullying committed by means of an electronic act, directed specifically toward a student or school personnel.
- Sexual harassment.
- Hate violence, if the student is in grades 4 through 12.
- Intentionally engaged in harassment, threats, or intimidation that is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting, creating substantial disorder, or invading rights.
- Made terrorist threats against school officials or school property.

AUTHORITY: Ed. Code §§ 48900; 48900.2; 48900.3; 48900.4; 48900.7

**Mandatory Recommendation for Expulsion**

Administration must immediately suspend and recommend expulsion of a student who commits one of the following offenses, either on school grounds or at an off-campus school-sponsored event:

- Possessing, selling or furnishing a firearm. Note: This does not apply to "imitation" firearms.
- Brandishing a knife at another person.
- Unlawfully selling a controlled substance.
- Committing or attempting to commit a sexual assault or committing sexual battery.
- Possessing an explosive.

The governing board shall order a pupil expelled upon finding that the pupil committed one of these acts.

AUTHORITY: Ed. Code § 48915(c)

**Mandatory Unless Inappropriate Recommendation for Expulsion**

Administration must recommend expulsion of a student who commits one of the following offenses unless it believes the expulsion is inappropriate due to the particular circumstance, or that an alternative means of correction would address the conduct:

- Causing serious physical injury to another person, except in self-defense.
- Possession of a knife or other dangerous object.
- Unlawful possession of any controlled substance (except for the first offense of possession of less than one ounce of marijuana, possession of over-the-counter medication for use by the pupil for medical purposes or medication prescribed for the pupil by a physician).
- Robbery or extortion.
- Assault or battery upon a school employee.

The governing board may order a pupil expelled upon finding that the pupil committed one of these acts if it finds that (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.

AUTHORITY: Ed. Code § 48915(a)

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