

**EXPULSION OR MANDATORY
PLACEMENT FOR SPECIAL
EDUCATION STUDENTS**

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GUIDELINES AND TIMELINES FOR SUSPENSION AND EXPULSION OF SPECIAL EDUCATION STUDENTS

I. SUSPENSION

A. First ten days:

1. First 10 days – no need for services during this time. A behavior plan should be considered and services may be provided if needed (CFR 300.121 (d) (1)). The “Positive Behavior Support Plan” form in the IEP may be used. No single suspension will exceed 5 days. (EC 48911)
2. After 10 days of suspension, an IEP meeting must be held within 10 business days and parents given the procedural safeguards.
3. The IEP team must determine if subsequent suspensions will result in a change of placement. To determine if it constitutes a *pattern*, the team considers (CFR 300.519 (b)):
4. The maximum number of days a special education student can be suspended is 20 in any school year at the current school site, with a maximum of 30 if the pupil is transferred to another school (EC 48903). The 20 days include any portion of a school day that a student is suspended (CFR 300.9 (c)). An in-school suspension does not count toward the days of suspension as long as the student had a chance to work on their school work and received the services and the amount of integration with non-disabled peers specified in IEP.
 - a. Length of each removal
 - b. Proximity of removals to one another
 - c. Total amount of time out of school
5. ***If it is determined that no pattern exists, subsequent suspensions are not considered to be a change of placement.*** You may implement additional suspensions for separate incidences up to 20 days (same limit as for general education students)).

Between 10-20 days, if not a pattern, the school is not required to provide special education services during the period of suspension. From the 11th day on, upon each incident the school personnel, including Special Education teacher, must determine what services are necessary to allow the student to progress in the general education curriculum and advance toward goals and objectives and where those

services should be provided – no special form or change in the IEP is required (CFR 300.121 (d) (3) (i)).

6. ***If a pattern exists, then it is a change of placement*** (CFR 300.519 (b)) A Manifestation Determination Review must be conducted. (CFR 300.523 (a)). (See Section “C”).

B. Functional behavioral assessment and behavior intervention plans (CFR 300.520). The functional behavioral assessment and behavior plan described in this part are different from the functional analysis assessment and behavior intervention plan required under California code of regulations for students who exhibit serious behaviors or for whom a behavior emergency has occurred (known as “Hughes bill”). However, if there is already a plan under this requirement, it could be the existing plan.

1. A Functional Behavioral Assessment must be done no later than ten business days after the student’s tenth day of removal (*even if there is no pattern*) unless a Positive Behavior Support Plan or Behavior Intervention Plan exists.
2. If no Functional Behavioral Assessment and behavior plan have been developed for the behavior for which the student is being removed, an IEP meeting must be convened. The team will review existing data about the behavior to determine if it is sufficient to address the various situational, environmental and behavioral circumstances surrounding the behavior:
 - a. If data is sufficient, develop a behavioral plan and implement immediately.
 - b. If sufficient data is not available, an Assessment Plan for a Functional Behavioral Assessment is developed. A best practice would be that the team recommends an interim Positive Behavior Support Plan for the behavior while the Functional Behavioral Assessment is being conducted. This Functional Behavioral Assessment should be conducted as soon as possible after the meeting, and an IEP meeting scheduled to develop a Behavior Intervention Plan as soon as the assessment is completed. The plan is implemented immediately. (CFR Parts 300 and 303 Attachment p. 12620)
3. If the student already has a Positive Behavior Support Plan/Behavioral Intervention Plan and the behavior is resulting in a *potential change of placement*, the IEP team must meet to review the plan and its implementation, and modify the plan as necessary to address the behavior.

4. If a student who already has a Positive Behavior Support Plan/Behavior Intervention Plan has been removed from the current educational placement for more than ten days in a school year and is subjected to a removal that does not constitute a change of placement:
 - a. IEP Team shall meet and review the behavior plan and its implementation to determine if modifications are necessary.
 - b. If one or more of the team members believe that modifications are necessary, the team shall modify it.

C. MANIFESTATION DETERMINATION REVIEW (CFR 300.523)

1. Required for suspension over 10 days when subsequent suspensions will result in a change of placement (because a pattern exists)
2. The IEP Team conducts the Manifestation Determination Review to determine the relationship between disability and the **behavior subject to disciplinary action**. At the IEP meeting the following must occur:
 - a. Parents must be given notice of disciplinary recommendation and procedural safeguards.
 - b. Consider all relevant information including evaluation and diagnostic results, input from parents, observations, and current IEP and placement. (*Assessment is not required, but if done, parent permission not required*) (EC 48915.5 (b)).
 - c. IEP Team may determine that the behavior of the child subject to the disciplinary action is not a manifestation of child's disability only if the IEP team determines that **the following were true for the behavior subject to the disciplinary action**:

Was the alleged conduct:

1. Caused by, or had a direct and substantial relationship to, the child's disability ?
 2. The direct result of AVUSHD's failure to implement the IEP ?
3. If there is no Behavioral Plan in place, the IEP team should initiate a Functional Behavioral Assessment.

4. If the two manifest questions allow, then child may be disciplined in the same manner as a child without a disability.
5. If there is a link found between the behavior subject to the disciplinary action and the disability, then the student shall not be suspended further for the behavior. The supports and services and behavior plan in the IEP shall be modified to attempt to address factors leading to the behavior.

II. EXPULSION

- A. There are five violations of the Ed Code that result in mandatory recommendation for expulsion. These violations are:
 1. Possessing, selling or furnishing a firearm. Ed. Code 48915 (c)(1)
 2. Brandishing a knife to another person. Ed. Code 48915 (c)(2)
 3. Unlawfully selling a controlled substance. Ed. Code 48915 (c)
 4. Committing or attempting to commit sexual assault or sexual battery. Ed. Code 48915 (c)(4)
 5. Possession of an explosive. Ed. Code. 48915 (c) (5)
- B. A Manifestation Determination review meeting must be held for all special education students for whom expulsion is being considered. (See Section I-C) The IEP team, at the Manifestation Determination, must consider existing assessments and diagnostic results including relevant information supplied by the parents, observations of the student, and the student's IEP.
- C. If it is a manifestation of the student's disability, follow procedures from: Section 1. SUSPENSION B. 2.

If the IEP team determines that the behavior subject to disciplinary action is a manifestation of the student's disability, the team shall not recommend expulsion. The placement, supports and services and behavior plan in the IEP should be developed and/or revised as appropriate to address factors leading to the behavior.

Special Education students may be recommended for an Interim Alternative Educational Setting (IAES) if they have committed either weapons or drug offenses. (Previously, IAES was available only in instances of weapons offenses.) IAES can be considered for a student who has not committed a weapons or drug offense if a number of criteria

are met. Particularly, the district must show by more than a preponderance of the evidence that maintaining the current placement is likely to result in an injury to the or others, or for sex offenses.

Under the provisions of Ed Code 48911 (g), an extension of a suspension pending an expulsion recommendation is allowed, following a meeting with the parent where it is determined that the presence of the student would cause a danger to persons or property, or a threat of disrupting the instructional process.

The Alternative Educational Setting shall be determined by the IEP Team and shall not exceed 45 days.

- D. Any Interim Alternative Educational Setting (IAES) in which a child is placed shall:
1. Be selected so as to enable the student to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and supports described in the child's current IEP, that will enable the child to meet the goals set out in the IEP; and
 2. Include services and supports designed to address the behavior so that it does not recur.

The IAES placement must **be planned for and determined by the IEP Team**. If the parent does not agree, the district may move forward with placement in the IAES.

During the pendency of due process, the IAES becomes the stay-put placement until a hearing officer decision or until the 45 days expire, whichever comes first. The IAES may include home instruction, alternative or non-public schools.

- E. If the board decides to expel a student with an IEP who has committed an expellable act, which has been determined NOT to be a manifestation of the child's disability, an IEP meeting must be convened. The IEP team must review interim and post-disciplinary placements for their ability to provide FAPE (CFR 300.121 (d)(2)(i)) in order to enable the child to advance in the curriculum and achieve the IEP goals.

SPECIAL EDUCATION STUDENT SUSPENSION CHECKLIST FOR SITE PRINCIPALS/ASSISTANT PRINCIPALS

- When suspending a student on consecutive occasions, check if the student is receiving any special education services. If yes, consult with your school psychologist.
- Short-term suspension (0 to 10 days, either cumulative or consecutive) **does not require** IEP or other special procedures. No requirement for educational services.
- Use in-school suspensions and/or in school restrictions whenever possible. These do not count as days of suspension.
- Use out of school suspension for **as few days as possible**. After 10 days (any portion of day) of suspension for students with IEPs, you must follow all procedural safeguards.
- After 10 days of suspension in one academic year:
 - Send copy of Parental Rights/Procedural Safeguards to parent
 - Convene an IEP team within 10 business days
 - IEP team completes Manifestation Determination worksheet
 - Must offer educational services to allow student to progress toward curriculum and meet IEP goals and objectives – determined by special education teacher and other school staff
- Were drugs, weapons, and/or sexual assault/battery a reason for suspension? If yes:
 - Conduct Manifestation Determination
 - If behavior **is not** a manifestation of student's disability, determine Interim Attendance Education Setting (IAEs) and may proceed with expulsion
 - IEP to reflect Interim Alternative Educational Setting
 - IEP team can proceed with appropriate IAES for 45 days
 - **May not** be expelled if behavior is a manifestation of disability
 - Revise IEP to address factors leading to behavior. (i.e. better behavior plan, more suspension, change of placement)
- For all other conduct violations, after 10 days of suspension
 - Conduct Manifestation Determination
 - If behavior is **not** a manifestation of disability, may continue to suspend up to 20 days. Positive Behavior Plan must be developed and implemented.
 - If behavior **is/was** a manifestation of student's disability, **may not suspend beyond 10 days** until you have reviewed/revised supports

services, and placement and behavior plan to address factors leading to behavior.

Expulsion or Mandatory Placement for Special Education Students

Pre-Expulsion IEP

1. Set up a Pre-expulsion IEP by the end of the 2nd day of the suspension. If possible this should be done when parent comes to pick up student on the day of the offense, otherwise:
2. Notify the Psych and Case Carrier on day 1 of the suspension so testing can begin. **This is a very important step.**
3. Make two documented attempts to contact parents and then send registered receipt letter. Hold the IEP with or without the parent. If the parent cannot attend in person, invite their participation by telephone. If they refuse this alternative, send a letter to the parent confirming in writing that the District attempted to secure their participation in person and by phone. This may take you beyond the 5-day limit. You must notify SS of the delay.
4. Special Ed VP shall speak or meet with the Principal prior to the IEP to discuss the case.
5. One of two determinations:
 - **Student is not eligible** to proceed with an expulsion recommendation due to his disability (under the new IDEA this will be a higher threshold).

Options: Recommend that the student...

- ✓ **Remains on campus** with some modifications to his schedule or program
 - ✓ **ED/45-day class** – Psychologist must contact SS (Reid Wagner) to determine if space is available for a 45 day placement.
 - **IS/Home Teaching** – Pending 45-day placement. Contact site Health Tech to arrange Home Teacher
 - ✓ **Home Teaching (if appropriate)** – Contact site Health Tech to arrange Home Teacher
 - ✓ **Do referral to Desert Pathways if appropriate**
- **Student is eligible** (i.e. conduct not related to disability)

Options: Recommend that the student....

- ✓ **RSP/SDC- PXHS, DW (mandatory placement only) or IS (if appropriate); Home Teaching in extraordinary circumstances**
- ✓ **ED – Pathways (depending on the students ED eligibility), or Home Teaching, PXHS**
- ✓ **Fill out (BSR) bus services request to transport student to the new location**

Expulsion or Mandatory Placement for Special Education Students

Pre-Expulsion Conference with Principal

1. Parent and student meet with the Principal after the IEP is held.

- VP attending the IEP reports the findings to the Principal prior to the meeting to present and explain the IEP team conclusions (the Special Ed VP should do all pre-expulsion IEP's)
- Principal meets with parent and student to hear the student's account of the incident and to determine if any further investigation is necessary to either prove or disprove the case.

The Principal has the following options:

- ✓ **Not to expel**
Notify Student Services
- ✓ **Recommend Mandatory Placement in lieu of expulsion**
Call Student Services to set up an appointment. (Site should not promise a particular placement; SS will determine placement)
ED students will not be placed at DW or RRPHS through this process.
- ✓ **Recommend to expel**
Hearing – Place student at PXHS or IS pending the hearing. Do not extend the suspension. Notify SS
Stipulation- Set up meeting with SS at the time of the parent conference. (SS will determine placement)