

DISCIPLINE

Definition

Suspension

Suspension means removal of a student from ongoing instruction for adjustment purposes. However, "suspension" does not mean any of the following:

1. Reassignment to another education program or class at the same school where the student will receive continuing instruction for the length of the day prescribed by the governing board for students of the same grade level.
2. Referral to a certificated employee designated by the principal to advise students.
3. Removal from the class, but without reassignment to another class or program, for the remainder of the class period without sending the student to the principal or the principal's designee as provided in § 48910. Removal from a particular class shall not occur more than once every five school days.

Expulsion

Expulsion means a removal of a student from (1) the immediate supervision and control, or (2) the general supervision of school personnel, as those terms are used in § 46300.

Removal

"Removal," as used in federal regulations such as those related to manifestation determination (MD) meetings, is a generic term used to describe any removal of a student for disciplinary purposes from ongoing instruction for any length of time.

Change of Placement

Removal of a student for disciplinary purposes is considered a change of placement if the removal is for more than ten consecutive school days or the student has been subjected to a series of removals that constitute a pattern:

1. Because the series of removals total more than ten cumulative school days in a school year;
2. Because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and
3. Because of factors such as the length of each removal, the total amount of time removed and the proximity of the removals to one another.

Legal Requirements

State

A student shall not be suspended from school or recommended for expulsion unless the superintendent or the principal of the school in which the student is enrolled determines that the student has committed an act as defined pursuant to any of subdivisions (a) to (r), inclusive:

- (a) (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.

(b) Possessed, sold, or otherwise furnished a firearm, knife, explosive, or other dangerous object, unless, in the case of possession of an object of this type, the pupil had obtained written permission to possess the item from a certificated school employee, which is concurred in by the principal or the designee of the principal.

- (c) *Unlawfully possessed, used, sold, or otherwise furnished, or been under the influence of, a controlled substance listed in Chapter 2 (commencing with § 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind.*
- (d) *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.*
- (e) *Committed or attempted to commit robbery or extortion.*
- (f) *Caused or attempted to cause damage to school property or private property.*
- (g) *Stole or attempted to steal school property or private property.*
- (h) *Possessed 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 pupil of his or her own prescription products.*
- (i) *Committed an obscene act or engaged in habitual profanity or vulgarity.*
- (j) *Unlawfully possessed or unlawfully offered, arranged, or negotiated to sell drug paraphernalia, as defined in Section 11014.5 of the Health and Safety Code.*
- (k) (1) *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.*
(2) *Except as provided in Section 48910, a pupil enrolled in kindergarten or any of grades 1 to 3, inclusive, shall not be suspended for any of the acts enumerated in this subdivision, and this subdivision shall not constitute grounds for a pupil enrolled in kindergarten or any of grades 1 to 12, inclusive, to be recommended for expulsion. This paragraph shall become inoperative on July 1, 2018, unless a later enacted statute that becomes operative before July 1, 2018, deletes or extends that date.*
- (l) *Knowingly received stolen school property or private property.*
- (m) *Possessed an imitation firearm. As used in this section, "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.*
- (n) *Committed or attempted to commit a sexual assault as defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal Code or committed a sexual battery as defined in Section 243.4 of the Penal Code.*
- (o) *Harassed, threatened, or intimidated a pupil who is a complaining witness or a witness in a school disciplinary proceeding for purposes of either preventing that pupil from being a witness or retaliating against that pupil for being a witness, or both.*

(p) Unlawfully offered, arranged to sell, negotiated to sell, or sold the prescription drug Soma.

(q) Engaged in, or attempted to engage in, hazing. For purposes of this subdivision, “hazing” means a method of initiation or preinitiation into a pupil organization or body, whether or not the organization or body is officially recognized by an educational institution that is likely to cause serious bodily injury or personal degradation or disgrace resulting in physical or mental harm to a former, current, or prospective pupil. For purposes of this subdivision, “hazing” does not include athletic events or school-sanctioned events.

(r) Engaged in an act of bullying. For purposes of this subdivision, the following terms have the following meanings: (1) “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 pupil or group of pupils as defined in Section 48900.2, 48900.3, or 48900.4, directed toward one or more pupils that has or can be reasonably predicted to have the effect of one or more of the following: (A) Placing a reasonable pupil or pupils in fear of harm to that pupil’s or those pupils’ person or property. (B) Causing a reasonable pupil to experience a substantially detrimental effect on his or her physical or mental health.

(C) Causing a reasonable pupil to experience substantial interference with his or her academic performance.

(D) Causing a reasonable pupil to experience substantial interference with his or her ability to participate in or benefit from the services, activities, or privileges provided by a school.

(2) (A) “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, or image.

(ii) A post on a social network Internet Web site, including, but not limited to: (I) 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 (1). (II) Creating a credible impersonation of another actual pupil for the purpose of having one or more of the effects listed in paragraph (1). “Credible impersonation” means to knowingly and without consent impersonate a pupil for the purpose of bullying the pupil and such that another pupil would reasonably believe, or has reasonably believed, that the pupil was or is the pupil who was impersonated.

(III) Creating a false profile for the purpose of having one or more of the effects listed in paragraph (1). “False profile” means a profile of a fictitious pupil or a profile using the likeness or attributes of an actual pupil other than the pupil who created the false profile. (iii) An act of cyber sexual bullying.

(I) For purposes of this clause, “cyber sexual bullying” means the dissemination of, or the solicitation or incitement to disseminate, a photograph or other visual recording by a pupil to another pupil 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 subparagraphs (A) to (D), inclusive, of paragraph (1). A photograph or other visual recording, as described above, shall 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. (II) For purposes of this clause, “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.

(B) Notwithstanding paragraph (1) and subparagraph (A), 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. (3) “Reasonable pupil” means a pupil, including, but not limited to, an exceptional

needs pupil, who exercises average care, skill, and judgment in conduct for a person of his or her age, or for a person of his or her age with his or her exceptional needs.

In addition to the reasons specified in § 48900, a student may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the student is enrolled determines that the student has committed sexual harassment as defined in § 212.5 of the EC. For the purposes of this chapter, the conduct described in Section 212.5 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 student's academic performance or to create an intimidating, hostile or offensive educational environment. This section shall not apply to students enrolled in kindergarten and grades 1 to 3, inclusive.

A student in grades 4 to 12, inclusive, may also be suspended from school or recommended for expulsion if the superintendent or principal of the school in which the student is enrolled determines that the student has caused, attempted to cause, threatened to cause, or participated in an act of hate violence as defined in § 233 of the EC.

Additionally, a student enrolled in any of grades 4 to 12, inclusive, may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the student is enrolled determines that the student has intentionally engaged in harassment, threats or intimidation, directed against district personnel or students, that is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting class work, creating substantial disorder, and invading the rights of either school personnel or students by creating an intimidating or hostile educational environment.

Suspension shall be imposed only when other means of correction fail to bring about proper conduct. However, a student, including a student with a disability, as defined in § 56026 of the EC, may be suspended for any of the reasons enumerated in § 48900 upon a first offense if the principal or superintendent of schools determines that the student violated subdivision (a), (b), (c), (d), or (e) of § 48900 or that the student's presence causes a danger to persons or property or threatens to disrupt the instructional process.

A student with a disability, as defined in § 56026, may be suspended or expelled from school in accordance with § 1415(k) of Title 20 of the United States Code, the discipline provisions contained in §§ 300.530 to 300.537, inclusive, of Title 34 of the Code of Federal Regulations, and other provisions of this part that do not conflict with federal law and regulations.

A free appropriate public education (FAPE) for students with a disability suspended or expelled from school shall be in accordance with § 1412(a) (1) of Title 20 of the United States Code and § 300.530(d) of Title 34 of the Code of Federal Regulations.

Federal:

Determination of Setting

The student's IEP team determines the interim alternative educational setting for services under § 300.530(c), (d) (5), and (g).

Appeal

General. The parent of a child with a disability who disagrees with any decision regarding placement under §§ 300.530 and 300.531 or the manifestation determination under § 300.530(e) or an district that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to §§ 300.507 and 300.508(a) and (b).

Placement During Appeals

When an appeal under § 300.532 has been made by either the parent or the district, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in § 300.530(c) or (g), whichever occurs first, unless the parent and the California Department of Education (State Educational Agency) or the district agree otherwise.

Protections for Student Not Determined Eligible for Special Education and Related Services Excerpt

a. General. A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if the public agency had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

b. Basis of knowledge. A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred: 1. The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency or a teacher of the child, that the child is in need of special education and related services; 1. The parent of the child requested an evaluation of the child pursuant to §§ 300.300 through 300.311; or 2. The teacher of the child or other personnel of the district expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.

c. Exception. A public agency would not be deemed to have knowledge under paragraph (b) of this section if: 1. The parent of the child: i. has not allowed an evaluation of the child pursuant to §§ 300.300 through 300.311; or ii. Has refused services under this part; or 2. The child has been evaluated in accordance with §§ 300.300 through 300.311 and determined to not be a child with a disability under this part.

d. Conditions that apply if no basis of knowledge. 1. If a public agency does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors consistent with paragraph (d) (2) of this section. 2. i. If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under § 300.530, the evaluation must be conducted in an expedited manner. ii. Until the evaluation is completed, the child remains in the educational placement determined by school authorities which can include suspension or expulsion without educational services. iii. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services in accordance with this part, including the requirements of §§ 300.530 through 300.536 and section 612(a)(1)(A) of the Act.

Referral to and Action by Law Enforcement

1. Rule of construction. Nothing in this part prohibits an agency from reporting a crime committed by a student with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a student with a disability.
2. Transmittal of records.
 - a. An agency reporting a crime committed by a student with a disability must ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.
 - b. An agency reporting a crime under this section may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act. (FERPA) (Authority: 20 U.S.C. 1415(k)(6))

Change of Placement

1. For purposes of removals of a student with a disability from the student's current educational placement under §§ 300.530 through 300.535, a change of placement occurs if:
 - a. The removal is for more than ten consecutive school days; or
 - b. The student has been subjected to a series of removals that constitute a pattern:
 - i. Because the series of removals total more than ten school days in a school year;
 - ii. Because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and
 - iii. Because of such additional factors as the length of each removal, the total amount of time the student has been removed and the proximity of the removals to one another.
2. The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.
3. This determination is subject to review through due process and judicial proceedings.

Legal References

EC 48900; EC 48900.2; EC 48900.3, EC 48900.4; EC 48900.5; EC 48915.5; EC 48925 34 CFR 300:530-537

Timelines

Manifestation Determination (MD)

An IEP meeting to conduct a manifestation determination (MD) must be held within ten school days of the decision to remove a student for disciplinary purposes if the removal constitutes a change in placement.

Local Procedures

As a general rule, students with a disability may be suspended in the same manner as students without a disability for the first ten days of suspension. After ten days of suspension, a student may be suspended up to ten additional days subject to specific limitations to be discussed later.

Students with a disability may also be expelled provided that the student continues to receive special education services pursuant to an IEP.

The procedures pertaining to suspension and expulsion for both identified students with a disability and students not yet identified as eligible for special education are explained in detail below.

Rights of Students Not Yet Eligible for Special Education

A student who has not been officially identified as a student with disabilities may assert the procedural safeguards granted to a student with a disability only if the district had knowledge that the student had a disability before the behavior that precipitated the disciplinary action occurred. The decision as to whether the district had prior knowledge shall be made by the appropriate district special education administrator.

The district shall be deemed to have had knowledge that the student had a disability if before the behavior that precipitated the disciplinary action:

1. The parent/guardian expressed concern to supervisory or administrative personnel of the district or a teacher of the student, in writing, that the student is in need of special education or related services; or
2. The parent or guardian requested an evaluation of the student for special education eligibility; or
3. The teacher of the student or other district personnel expressed specific concerns directly to the district's director of special education or other supervisory district personnel about a pattern of behavior demonstrated by the student.

The district would be deemed to not have knowledge that a student is disabled if the parent/guardian has not allowed the student to be evaluated for special education services or has refused services. In addition, the district would be deemed to not have knowledge if the district had conducted an evaluation and determined that the student was not an individual with a disability. If the district did not have knowledge of the disability, the student shall be disciplined in accordance with procedures established for students without disabilities.

If a request is made for an evaluation of a student during the time period in which the student is subject to disciplinary measures, the law requires that the evaluation shall be conducted in an expedited manner. Until the evaluation is completed, the student shall remain in the educational placement determined by school authorities, which may include suspension or expulsion without educational services. If the student is eventually found eligible for special education services, the district shall develop an IEP subject to the procedures for identified student with a disability described herein.

Suspension Procedures for Identified Student with Disability Needs

A district superintendent or designee may suspend a student with a disability for up to five consecutive school days for a single incident of misconduct and for up to 20 school days in a school year, as long as the suspension(s) does not constitute a change in placement (see definition above) pursuant to federal regulations. If, for the purpose of adjustment, a student enrolls in or is transferred to another general school class or a continuation school or class, the total number of days of suspension shall not exceed 30 days.

The principal or designee should monitor the number of days, including portions of days that students with valid IEPs have been suspended during the school year. If a student misses even a portion of the school day due to disciplinary action, that entire day counts as a day of suspension.

Administrators should be cautious about sending students home as a disciplinary consequence with or without the consent of the parent. While the district administrator may not consider it a suspension at the time, legally it meets the definition of suspension and must be counted towards the student's total days of suspension. It is recommended that the district consider any days of suspension beyond ten cumulative to constitute a change of placement, which would require a manifestation determination (MD) meeting as described below.

Changing the placement of a student with a disability from a general school site to a community day school requires an IEP team meeting and parental consent unless it is done as a result of post-expulsion placement or as an interim alternative educational setting.

Note: As with general education students, suspension should only be imposed when other means of correction fail to bring about proper conduct. In addition, because of the limited number of days that a student with a disability can be suspended, the number of legal requirements involved and the fact that suspension is not generally an effective deterrent for students with a disability, administrators are encouraged to use suspension sparingly and develop other more proactive means of discipline.

Removals for 1 to 10 Cumulative Days

A student with a disability may be suspended in the same manner as a student with no disability for the first ten cumulative days of suspension. They can be removed from school and the school is not responsible for providing any special education services during the period of the removal. However, it is recommended that the IEP team meet to consider whether the student needs additional services and/or supports when the student is nearing ten days of suspension as the days of suspension are likely interfering with the student's ability to make progress on his/her IEP goals.

Removals in Excess of Ten Cumulative Days

Once the decision is made to suspend a student for the 11th day, the administrator must determine whether the removal constitutes a change of placement, as defined above. Accordingly, it is recommended that districts consider all suspensions of 11 or more cumulative days to be a change in placement.

If the removal does constitute a change of placement, the district can still suspend the student but the process becomes more complicated. Additionally, the federal timelines for a manifestation determination (MD) meeting will likely not line up with the state timelines regarding suspensions. The district will have to conduct a manifestation determination (MD) but by the time this is accomplished the suspension will more than likely have already been implemented. This is because the manifestation determination (MD) process is designed for disciplinary cases where expulsion is at issue, and the law assumes that IEP teams are including behavioral interventions for students with disabilities who have repeated suspensions.

Manifestation Determination Procedures

On the date on which the decision is made to make a removal for disciplinary reasons that constitutes a change in placement, the district must notify the parents of that decision and provide the parents with a Notice of Procedural Safeguards. That means that the administrator should be providing parents with a copy of Procedural Safeguards when he/she suspends a student for an 11th cumulative day or on the day the decision to expel the student is made. Within ten school days of the decision to make the change in placement, the district, parent and relevant members of the IEP team (as determined by the district and

the parent) shall meet and review all relevant information in the student's file, including the student's IEP, any teacher observations and any relevant information provided by the parent to determine:

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 district's failure to implement the IEP.

If either of the previous conditions is found to be true, the behavior shall be determined to be a manifestation of the student's disability. If neither condition is met, the behavior is not a manifestation of the student's disability.

It is important to note that while the manifestation determination (MD) is made in an IEP meeting, it does not require parent agreement and written consent in order to implement the findings of the IEP team. If the IEP team determines that the behavior was not a manifestation of the student's disability and the parent disagrees, the parent must file due process, otherwise the district may proceed with disciplinary action.

Behavior IS NOT a Manifestation of the Disability

If the IEP team determines that the student's behavior was not a manifestation of his/her disability, the student may be disciplined in accordance with the procedures for students without disabilities except that the student shall continue to receive services to the extent necessary to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. However, the decision regarding the extent and location of services during the removal will be determined by the IEP team. The IEP team will also review the student's behavior plan, or, in the case where there is no behavior plan, consider the need for developing one and/or the need for a FBA.

Behavior IS a Manifestation of the Disability

When the behavior is found to be a manifestation of the student's disability or a direct result of the failure to implement the IEP, the IEP team must:

1. Either conduct a FBA and develop a BIP, or when a BIP has already been developed, review the current BIP and modify it as necessary; and
2. Return the student to the placement from which the student was removed, unless the parent and district agree to a change of placement.

If the behavior is a manifestation of the student's disability or a direct result of the failure to implement the IEP, the district is not required to expunge the suspension or expulsion recommendation from the student's record. The district is only required to take actions 1 and 2 above.

Exceptions to the Manifestation Determination Rule

School staff 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, when the student commits one of the following acts:

1. Carries or possesses a weapon, as defined in 18 USC 930 (g) (2), to or at school, on school premises or to or at a school function under the jurisdiction of the district.
2. Knowingly possesses or uses illegal drugs, as defined in 34 CFR 300.530(i) (2), while at school, on school premises or at a school function under the jurisdiction of the district.
3. Sells or solicits the sale of a controlled substance as defined in 21 USC 812(c), while at school, on school premises or at a school function under the jurisdiction of the district.

4. Has inflicted serious bodily injury upon another person as defined in 18 USC § 1365(h)(3), while at school, on school premises, or at a school function under the jurisdiction of the district.

Serious bodily injury means:

- a. Substantial risk of death.
- b. Extreme physical pain.
- c. Protracted/obvious disfigurement.
- d. Protracted loss/impairment of function of a bodily member, organ or mental faculty.

The interim alternative educational setting shall be determined by the IEP team. For most districts there are few options to use as an IAES. The most common placements tend to be community schools and, in some case, home instruction. Prior to assigning a student to home instruction, districts should check with the SELPA and/or their own legal counsel for recent rulings on this placement option.

Expulsion Procedures for Identified Student with Disability Needs

Expulsion is always a change in placement. Prior to expelling a student with disabilities, the district must conduct a manifestation determination (MD). If the IEP team determines that the behavior is a manifestation of the student's disability, the district must terminate expulsion proceeding and implement the manifestation determination (MD) procedures outlined above under suspension. This is true even if the behavior is one that requires mandatory expulsion under state or federal laws. If the IEP team determines that the behavior in question is not a manifestation of the student's disability, the district governing board may continue with expulsion proceedings. In the event of an expulsion, the governing board will determine the placement and all other aspects of the expulsion for a student with a disability in the same manner that it does for students who are not disabled. Whenever a student with a disability is expelled, the IEP team will meet to determine the extent of services necessary to enable the student to appropriately progress in the general curriculum, although in another setting, and appropriately advance toward achieving the goals set out in the student's IEP. If the parent does not agree with the decision of the IEP team, the parent may file for a due process hearing as described in the Due Process Appeals section of this policy. However, the district may proceed with disciplinary action.

Services Post-Expulsion

Any student with a disability who is expelled shall continue to receive services during the term of the expulsion to the extent necessary to enable the student to appropriately progress in the general curriculum, although in another setting, and appropriately advance toward achieving the goals set out in the student's IEP. The type and extent of services will be determined by the IEP team.

Readmission

Readmission procedures for students with disabilities shall be the same as those used for all students. Upon readmission, an IEP team meeting shall be convened and a new IEP will be developed to address the student's needs in the new environment.

Suspension of Expulsion

The Governing Board's criteria for suspending the enforcement of an expulsion order shall be applied to students with disabilities in the same manner as they are applied to all other students except that an IEP meeting shall be held to review and amend the existing IEP as appropriate. If a student is placed on a suspended expulsion and engages in another act that would cause his or her expulsion to be reinstated, the IEP team must hold a second manifestation determination (MD) meeting on the new conduct prior to reinstating the expulsion.

Notification to Law Enforcement Authorities

Prior to the suspension or expulsion of any student, including any student with a disability, the principal or designee shall notify appropriate city or county law enforcement authorities of any act of assault with a deadly weapon which may have violated Penal Code 245 (assault with a deadly weapon or firearm).

Within one school day after a suspension or expulsion of a student with disabilities, the principal or designee shall notify appropriate city or county law enforcement authorities, by telephone or other appropriate means, of any act by the student which may violate EC 48900(c) or (d), relating to the possession, use, offering or sale of controlled substances, alcohol, or intoxicants of any kind.

The principal or designee shall notify appropriate city or county law enforcement authorities, by telephone or other appropriate means, of any act by the student which involves the possession or sale of controlled substances or a violation of Penal Code 626.9 or 626.10.

Transmittal of Records

A district reporting a crime committed by a student with a disability must ensure that copies of the student's special education and disciplinary records are transmitted for consideration by the appropriate authorities to whom the district reports the crime. These records may only be transmitted to the appropriate authorities as permitted by the Family Educational Rights and Privacy Act (FERPA) and corresponding state law. In the absence of a subpoena, the reporting district will request written parental consent for the exchange of information prior to transmitting any special education or disciplinary records. The district should consult legal counsel if there is a question about whether or not authorities have a right to view and/or receive student records.

Due Process Appeals

If the parent/guardian disagrees with the determination that the student's behavior was not a manifestation of his/her disability or with any decision regarding placement in an interim alternative educational setting, the parent/guardian has a right to appeal the decision to a hearing officer. If the student's parent/guardian initiates a due process hearing to challenge the interim alternative educational placement or the manifestation determination (MD), the student shall remain in the interim alternative educational setting pending the decision of the hearing officer or the expiration of the 45-school day time period, whichever occurs first, unless the parent/guardian and district agree otherwise. If school personnel maintain that it is dangerous for the student to continue to be placed in the current placement (placement prior to removal to the interim alternative education setting) while the due process proceedings are pending, the Superintendent or designee may request an expedited due process hearing.

Local Forms

Suspensions and/or expulsions should be documented using district general education forms. A Manifestation Determination Form is available on SEIS for IEP teams to use.

FAQs

Is it considered a suspension if the parent agrees to take their student home when he/she has behavior problems?

Yes, if this is not a consented-to IEP accommodation, then the day should be counted as a suspension.

How many times do you have to do a manifestation determination (MD)?

Once you pass ten cumulative days of suspension, the IEP team will have to meet and conduct a MD for every subsequent suspension (if the removal constitutes a change of placement).

What happens if the parent disagrees with the district's determination about change of placement?

If the district and parent are unable to resolve the issue, the parent can file for a due process hearing.

Can the teacher suspend a student?

Legally yes, generally speaking, the teacher can suspend for the remainder of the day and the following day. Teachers should consult with their site principal regarding policies and procedures related to teacher suspensions. This suspension counts towards a student's cumulative days of suspension and should be recorded as such.

Does a partial day suspension count as a day of suspension?

Yes, the suspension counts towards as a student's cumulative days of suspension and should be recorded as such. This would also apply if a teacher suspends a student for a single period only.

REMINDERS

- Students with a disability may be suspended in the same manner as students with no disability needs for the first 10 days of suspension.
- A student may be suspended for a maximum of five consecutive days
- Suspension should always be a last resort, and behavioral interventions should be implemented for students with behavioral needs.
- Students with a disability can be suspended beyond ten days. In most cases, the IEP team will need to hold a manifestation determination meeting to do so.
- Administrators should carefully track the number of days, including partial days that a student with disability needs has been suspended.
- "Change of placement" is a crucial and tricky concept relative to suspension. It is safest to hold a manifestation determination meeting on the 11th cumulative day of suspension for all IEP students.
- Manifestation determination does not require parent consent.
- To exercise dissent, parents must file due process if they disagree with the manifestation determination.