

STUDENT DISCIPLINE

The Sacramento City Unified Special Education Local Plan Area (SELPA) and the Sacramento City Unified School District (District) have written these guidelines on discipline of students, including students with disabilities, to supplement, not supplant, local policies and procedures pertaining to suspension and expulsion, which is the foundation for discipline for all students. The majority of the information is derived from the California Education Code (Education Code) and the Individual with Disabilities Education Act (IDEA).

I. Suspensions

This section provides information on Education Code violations, suspensions related to school activities, total number of days of suspension, and notification to parents.

A. Education Code Violations

The Education Code section 48900 states that a student shall not be suspended from school or recommended for expulsion unless the District superintendent or principal of the school in which the student is enrolled determines that the student has committed an act defined below:

- (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 any firearm, knife, explosive, or other dangerous object, unless, in the case of possession of any object of this type, the student had obtained written permission to possess the item from a certificated school employee, which is concurred by the principal or the designee of the principal.
- (c) Unlawfully possessed, used, sold, or otherwise furnished, or been under the influence of, any 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 any 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, and either sold, delivered, or otherwise furnished to any 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) Stolen or attempted to steal school property or private property.
- (h) Possessed or used tobacco, or any 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 use or possession by a student 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 any drug paraphernalia, as defined in §11014.5 of the Health and Safety Code.
- (k) 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.

Limitation: As of July 1, 2020, a student in kindergarten or grades 1 through 5 cannot be suspended from school for willful defiance or disrupting school activities, and no student in any grade level may be expelled for such reasons. From July 1, 2020, through June 30, 2025, students in grade 6 to 8 also may not be suspended from school for willful defiance or disrupting school activities. Teachers retain the right to suspend a student from their class for the day of the suspension and the day following in accordance with Education Code section 48910.

- (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, 287, 288, or 289 of, or former section 288a 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 student who is a complaining witness or a witness in a school disciplinary proceeding for the purpose of either preventing that student from being a witness or retaliating against that student 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 pre-initiation 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. 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 student or group of students as defined in §48900.2, §48900.3, or §48900.4, directed toward one or more students that has or can be reasonably predicted to have the effect of one or more of the following:

- (A) Placing a reasonable student or students in fear of harm to that student's or those students' person or property.
 - (B) Causing a reasonable student to experience a substantially detrimental effect on his or her physical or mental health.
 - (C) Causing a reasonable student to experience substantial interference with his or her academic performance.
 - (D) Causing a reasonable student 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, video, or image.
 - (ii) A post on a social network internet website 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 student 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 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.
 - (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 student or a profile using the likeness or attributes of an actual student other than the student who created the false profile.
 - (iii) (I) An act of cyber sexual bullying.
 - (II) 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 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 subparagraphs (A) to (D), inclusive, of paragraph (1). A photograph or other visual recording, as described in this subclause, 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.

(III) 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 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 or her age, or for a person of his or her age with his or her exceptional needs.

(s) [see below for information about participation in school activities]

(t) A student who aids or abets, as defined in Section 31 of the Penal Code, the infliction or attempted infliction of physical injury to another person may be subject to suspension, but not expulsion, pursuant to this section, except that a student who has been adjudged by a juvenile court, as an aider and abettor, a crime of physical violence in which the victim suffered great bodily injury or serious bodily injury shall be subject to discipline pursuant to subdivision (a).

(u) As used in this section, "school property" includes, but is not limited to, electronic files and databases.

(v) For a student subject to discipline under this section, a superintendent of the school district or principal may use his or her discretion to provide alternatives to suspension or expulsion, using a research-based framework with strategies that improve behavioral and academic outcomes, that are age appropriate and designed to address and correct the student's specific misbehavior as specified in Section 48900.5.

(w) (1) It is the intent of the Legislature that alternatives to suspension or expulsion be imposed against a student who is truant, tardy, or otherwise absent from school activities.

(2) It is further the intent of the Legislature that the Multi-Tiered System of Supports, which includes restorative justice practices, trauma-informed practices, social and emotional learning, and school wide positive behavior interventions and support, may be used to help students gain critical social and emotional skills, receive support to

help transform trauma-related responses, understand the impact of their actions, and develop meaningful methods for repairing harm to the school community.

In addition to the reasons specified in Education Code section 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 Section 212.5. 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 individual'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. (Ed. Code § 48900.2.)
- Caused, attempted to cause, threatened to cause, or participated in an act of, hate violence, as defined in subdivision (e) of Section 233. (Applies to a student in any of grades 4 to 12, inclusive.) (Ed. Code § 48900.3.)
- Intentionally engaged in harassment, threats, or intimidation, directed against school district 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. (Applies to a student in any of grades 4 to 12, inclusive.) (Ed. Code § 48900.4.)
- Made terroristic threats against school officials or school property, or both. For the purposes of this section, "terroristic threat" shall include any statement, whether written or oral, 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 or her own safety or for his or her immediate family's safety, or for the protection of school district property, or the personal property of the person threatened or his or her immediate family. (Ed. Code § 48900.7.)

B. Suspension Related to School Activity

A student may not be suspended or expelled for any of the acts enumerated in this section unless that act is related to school activity or school attendance occurring within a school under the jurisdiction of the superintendent or principal or occurring within any other school district. A student may be suspended or expelled for acts that are enumerated in this section and related to

school activity or attendance that occur at any time, including, but not limited to, any of 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 campus.
- (4) During, or while going to or coming from, a school sponsored activity.

(Ed. Code § 48900(s).)

A superintendent or principal may use his or her discretion to provide alternatives to suspension or expulsion, including, but not limited to, counseling and an anger management program, for a student subject to discipline under this section. It is the intent of the Legislature that alternatives to suspension or expulsion be imposed against any student who is truant, tardy, or otherwise absent from school activities.

(Ed. Code § 48900(v)-(w).)

If an individual with exceptional needs is excluded from school bus transportation, the student is entitled to be provided with an alternative form of transportation at no cost to the student or parent or guardian provided that transportation is specified in the student's individualized education program.

(Ed. Code § 48915.5(c).)

C. Total Number of Days of Suspension

The total number of days for which a student may be suspended from school shall not exceed 20 school days in any school year, unless for purposes of adjustment, a student enrolls in or is transferred to another regular school, an opportunity school or class, or a continuation education school or class, in which case the total number of school days for which the student may be suspended shall not exceed 30 days in any school year.

For the purposes of this section, the District may count suspensions that occur toward the maximum number of days for which a student may be suspended in any school year, while a student is enrolled in another school district.

(Ed. Code § 48903.)

The principal of the school, the principal's designee, or the superintendent may suspend a student from the school for any of the reasons enumerated above in Section 48900, for no more than five consecutive school days.

(Ed. Code § 48911(a).)

Suspension by the principal, the principal's designee, or the superintendent shall be preceded by an informal conference conducted by the principal or the principal's designee or the superintendent between the student and, whenever practicable, the teacher, supervisor, or school employee who referred the student to the principal, the principal's designee, or the superintendent. At the conference, the student shall be informed of the reason for the disciplinary

action, including the other means of correction that were attempted before the suspension as required under Section 48900.5, and the evidence against him or her and shall be given the opportunity to present his or her version and evidence in his or her defense.

(Ed. Code, § 48911(b).)

A principal, the principal's designee, or the superintendent may suspend a student without affording the student an opportunity for a conference only if the principal, the principal's designee, or the superintendent determines that an emergency situation exists.

An "Emergency situation" means a situation determined by the principal, the principal's designee, or the superintendent to constitute a clear and present danger to the life, safety, or health of students or school personnel. If a student is suspended without a conference prior to suspension, both the parent and the student, or, if the student is a foster child, the foster child's educational rights holder, attorney, and county social worker, or, if the student is an Indian child, as defined in Section 224.1 of the Welfare and Institutions Code, the Indian child's tribal social worker and, if applicable, county social worker shall be notified of the student's right to a conference and the student's right to return to school for the purpose of a conference. The 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.

(Ed. Code § 48911(c).)

D. Alternatives to Suspension

According to Education Code section 48900.5, a suspension shall be imposed only when other means of correction fail to bring about proper conduct. A superintendent or principal may use his or her discretion to provide alternatives to suspension or expulsion, including, but not limited to, counseling and an anger management program, for a student subject to discipline under this section.

However, a student, including an individual with exceptional needs as defined in Education Code section 56026 may be suspended for any of the reasons enumerated in Education Code section 48900 upon a first offense, if the principal or superintendent determines that the student violated subdivision (a), (b), (c), (d), or (e) of Education Code section 48900 (detailed above) or that the student's presence causes a danger to persons or property or threatens to disrupt the instructional process.

NOTE: Whenever possible, teachers and administrators should implement interventions and consequences in response to a student's misbehavior that do not involve removing the student from his or her educational setting. Some suggestions for interventions prior to suspension are below (Ed. Code, § 48900.5(b).):

- Use of a classroom behavior management system that is positive, fair, consistent, and understood.
- Redirection of the student back to task.
- Discussion with the student.
- Discussion with the parent/guardian.

- Conference among school personnel, the student’s parent/guardian, and the student.
- Loss of privilege or points; change in conduct grade, etc.
- A positive behavioral support approach with tiered interventions that occur during the school day.
- Implementation of Tier 2 positive behavioral interventions.
- Detention (after school) with time for the teacher and student to review alternative ways the student could respond and behave in the classroom that would be more appropriate.
- After-school programs that address specific behavioral issues or expose students to positive activities and behaviors.
- Referral of student to school psychologist and/or mental health provider.
- Participation in a restorative justice program.
- Adjustment of the student’s classes and schedule.
- If the student has an individualized educational program (“IEP”), request to hold an IEP team meeting to:
 - Describe the target (problem) behavior in observable and measurable terms on the IEP.
 - Develop IEP goals (and objectives, if appropriate) to address target behavior.
 - Determine level of behavioral intervention needed and document strategies on the appropriate form (e.g., Tier 2 Positive Behavioral Interventions, Tier 3 Positive Behavioral Intervention Plan).
 - Identify supports and resources necessary to implement behavioral interventions and supports.
 - Consider whether additional assessment is necessary to identify the student’s behavior and/or social and emotional needs.

E. Notification to Parents / District Policies and Procedures

At the time of suspension, a school employee shall make a reasonable effort to contact the student's parent or guardian in person or by telephone. Whenever a student is suspended from school, the parent or guardian shall be notified in writing of the suspension. A school employee shall report the suspension of the student, including the cause therefore, to the governing board of the school district or to the school district superintendent in accordance with the regulations of the governing board. The parent or guardian of any student shall respond without delay to any request from school officials to attend a conference regarding his or her child's behavior. No penalties may be imposed on a student for failure of the student's parent or guardian to attend a conference with school officials. Reinstatement of the suspended student shall not be contingent upon attendance by the student's parent or guardian at the conference. (Ed. Code, §48911(d)-(f).)

II. Expulsion

This section provides information on situations requiring a mandatory referral for expulsion, exception for students enrolled in charter schools, expulsion of students with exceptional needs, and readmission of an expelled student.

A. Mandatory Referral for Expulsion

The principal or the superintendent *shall recommend* the expulsion of a student for any of the following acts committed at school or at a school activity off school grounds, unless the principal or superintendent finds that expulsion is inappropriate due to the particular circumstance, or that an alternative means of correction would address the conduct:

- (1) Causing serious physical injury to another person, except in self-defense.
- (2) Possession of any knife or other dangerous object of no reasonable use to the student.
- (3) Unlawful possession of any controlled substance listed in Chapter 2 (commencing with §11053) of Division 10 of the Health and Safety Code, except for either of the following:
 - (i) The first offense for the possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis.
 - (ii) The possession of over-the-counter medication for use by the student for medical purposes or medication prescribed for the student by a physician.
- (4) Robbery or extortion.
- (5) Assault or battery, as defined in §240 and §242 of the Penal Code, upon any school employee.

(Ed. Code, § 48915.)

If the principal or the superintendent makes a determination as described above, he or she is encouraged to do so as quickly as possible to ensure that the student does not lose instructional time. (Ed. Code, § 48915(a)(2).)

A decision to expel shall 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.

The principal or superintendent *shall* immediately suspend, pursuant to Education Code section 48911, and shall recommend expulsion of a student that he or she determines has committed any of the following acts at school or at a school activity off school grounds:

- (1) Possessing, selling, or otherwise furnishing a firearm. This subdivision does not apply to an act of possessing a firearm if the student had obtained prior written permission to possess the firearm from a certificated school employee, which is concurred in by the principal or the designee of the principal. This subdivision applies to an act of possessing a firearm only if the possession is verified by an employee of a school district. The act of possessing an imitation firearm, as defined in subdivision (m) of Section 48900, is not an offense for which suspension or expulsion is mandatory pursuant to this subdivision and subdivision (d), but it is an offense for which suspension, or expulsion pursuant to subdivision (e), may be imposed.
- (2) Brandishing a knife at another person.
- (3) Unlawfully selling a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.
- (4) Committing or attempting to commit a sexual assault as defined in subdivision (n) of Section 48900 or committing a sexual battery as defined in subdivision (n) of § 48900.
- (5) Possession of an explosive.

(Ed. Code, § 48915(c).)

Following a meeting with the parent/guardian the suspension for the student will be extended until the expulsion proceedings are completed. If the student is a foster child, as defined in Education Code section 48853.5, the superintendent or designee or the district superintendent's designee, including, but not limited to, the educational liaison for the school district, shall also invite the student's attorney and an appropriate representative of the county child welfare agency to participate in the meeting. (Ed. Code, § 48911(g).)

The governing board shall order a student expelled upon finding that the student committed an act listed above, and shall refer that student to a program of study that meets all the following conditions:

- (1) It is appropriately prepared to accommodate students who exhibit discipline problems.

- (2) It is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school.
 - (3) It is not housed at the school site attended by the student at the time of suspension.
- (Ed. Code, § 48915(d).)

B. Readmission of an Expelled Student

When a student is expelled, the governing board typically outlines terms and conditions for readmission to the district. The student may apply for readmission and be considered for reinstatement by the governing board upon satisfactory completion of the terms and conditions in the rehabilitation assignment. *Upon reinstatement, the governing board may order the expungement of any or all records of the expulsion proceedings.* (Ed. Code, § 48917(e).) *A student shall not be denied enrollment or readmission to a public school solely on the basis that he or she has had contact with the juvenile justice system.* (Ed. Code, § 48645.5(b).)

When a student has an expulsion suspended, the governing board typically reassigns the student to an educational setting wherein he/she can simultaneously access the general education curriculum and work toward satisfactory completion of the terms and conditions in the rehabilitation plan. If a student on a suspended expulsion reoffends (violates the provisions of Education Code section 48900) again during the time of the suspended expulsion, he/she is immediately expelled, and the regular readmission criteria apply.

III. Discipline of Students with Exceptional Needs

Suspension of students with exceptional needs requires that the school administrators and IEP team members understand the limits of suspension of students with disabilities, requirements for IEP review following suspension, and alternatives to suspension.

A. Limits of Suspension of Students with Disabilities

As noted previously, the principal of the school, the principal's designee, or the superintendent suspend a student from the school for any of the reasons enumerated in Education Code section 48900. An individual with exceptional needs may be suspended for up to, but not more than five consecutive school days. The student may be suspended for up to ten cumulative days in a school year before an IEP team manifestation determination meeting is required. The student can be removed for more than 10 days for separate acts of misconduct, as long as the removals do not constitute a pattern, as discussed below. During any removal of more than 10 days the school must provide services to the extent determined necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals on his or her IEP.

B. Notifications Specific to Students with Disabilities

The law imposes a high standard for parental involvement for students with disabilities being considered for disciplinary action. Districts are required to implement appropriate policies and procedures to ensure parent participation. (34 C.F.R. § 300.500.) District policies and procedures must:

- Include a provision that if disciplinary action is considered to change the placement of a student with a disability, the parents will be notified on the same day this decision is made and be given a copy of their rights or “Notice of Procedural Safeguards.” (34 C.F.R. § 303.530.)
- Require that, if neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the district uses other methods to ensure their participation, including individual or conference telephone calls or video conferencing.
(34 C.F.R. § 300.322(c), 300.328, 300.501(c)(3).)
- Require that, if a placement decision was made by a group without the involvement of a parent, the district has a record of its inability to obtain the parent’s participation in the decision and the attempts made to ensure their involvement. (34 C.F.R. § 300.501(c)(4).)
- Include a provision that parents will be informed that they have the right to pursue a due process hearing if they disagree with the decisions of the IEP team regarding disciplinary removals. (34 C.F.R. § 300.530-537, 20 U.S.C. § 1415(k)(3), Ed. Code, § 48915.5(a).)
- Include a provision that an expulsion hearing will be conducted only after the IEP team convenes and makes the required findings.
(34 C.F.R. § 300.530-537, 20 U.S.C. § 1415(k), Ed. Code, § 48915.5(a).)
- Include a provision that relevant disciplinary procedures applicable to all children will be carried out only when it has been determined that the student’s placement was appropriate, and that the behavior was not a manifestation of the student’s disability.
(34 C.F.R. § 300.530-537, 20 U.S.C. § 1415(k), Ed. Code, § 48915.5(a).)

C. IEP Review Following Suspension

An IEP meeting is not required prior to suspending a student with a disability up to ten cumulative school days in a school year. However, it is recommended that the IEP team should meet to review a student’s placement and program when the student is experiencing serious discipline problems leading to multiple suspensions or other disciplinary actions. It is required that the IEP team conducts an IEP manifestation determination review when a student’s suspensions total ten cumulative school days or the student is removed for more than ten consecutive school days. The IEP team must determine how the student will receive a free appropriate public education (“FAPE”) on the 11th and any subsequent days of suspension. The team will also determine if additional assessment is needed, if the misconduct was caused by, or had a direct and substantial relationship to the student’s identified disability, and if the student is appropriately placed.

NOTE: The IEP team must hold a manifestation determination meeting after every suspension beyond ten cumulative days for a student with a disability.

D. Protections for Students Not Determined Eligible for Special Education Services

i. (Basis of Knowledge)

A student may assert the same protections provided to students with disabilities if the District had knowledge that the student was a student with a disability prior to the behavior that led to the disciplinary removal.

The *Basis of Knowledge* is determined by the following:

- The parent of the child expressed a concern in writing to school personnel that they believe their child requires special education and related services.
- The parent of the child requested an evaluation in writing for special education and related services.
- The teacher of the student, or other school personnel, have expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education or site administrator.

NOTE: When determining *Basis of Knowledge*, it is important to consider information provided in all contexts including 504 meetings and student study team meetings. Also, districts must not limit “patterns of behavior” to behaviors that are associated with disciplinary incidents.

The following are exceptions to the *Basis of Knowledge*:

- If the parent of the student would not allow the District to conduct an evaluation for special education or related services.
- The student has been evaluated for special education and related services and did not meet the eligibility requirements.

If no *Basis of Knowledge* exists prior to the behavior which requires disciplinary actions,

- The District may use disciplinary measures which apply to students without disabilities who engage in comparable behaviors.
- If a request for assessment is made during this time period, an expedited evaluation will be conducted.
- During the evaluation period, the student will remain in the educational placement determined by school authority, which may include the continuation of the suspension and/or expulsion without educational services, so long as educational services are not provided to other nondisabled students during removal.
- If the evaluation determines the student meets eligibility requirements for special education and related services, the District must provide appropriate services in accordance with the student’s IEP.

ii. Manifestation Determination for Removal of Student with a Disability

Included in this section are guidelines and/or legal references regarding removals, students served in nonpublic schools or regional programs, the manifestation determination review process, conducting a functional behavioral analysis, the provision of FAPE, and interim alternative education settings.

iii. Guidelines Regarding Removals

Below is a table consisting of various types of removals and indication of whether a Manifestation Determination is required as a result of a change in placement.

Type of Renewal	Change in Placement?	Manifestation Determination Required?
Short-term Removal of < 10 days	NO	NO
Short-term Removals Totaling > 10 Cumulative Days AND does NOT Constitute a Pattern	YES	YES
Series of Short-term Removals Totaling > 10 Cumulative Days AND Constitutes a Pattern	YES	YES
Long-term Removals > 10 Consecutive Days	YES	YES

E. Practice Pointers

- A student with a disability cannot be suspended or expelled from school for a long-term removal of more than ten cumulative days due to behaviors that are a manifestation of his or her disability.
- Services (FAPE) must continue for students with disabilities who are suspended or expelled from school during any subsequent days of removal after the 10th day, and less than 10 days if servic^{es} are provided to students without disabilities in similar removals.
- When the removal is NOT a change of placement, school personnel must consult at least one of the teachers of the student with a disability to determine the extent to which services are needed to enable the student to continue 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.

- **On the date of the decision to suspend or recommend the child for expulsion, school personnel must notify the parent(s)/guardian of either the decision to suspend or a recommendation for expulsion and provide the parent(s)/guardian with a copy of the procedural safeguards notice.** (34 C.F.R. § 300.530(h).)
- The District shall notify a foster child's attorney and the appropriate representative of the county child welfare agency of potential expulsion proceedings pending manifestation determination. (Ed. Code, § 48853.5(c).)

C. Expulsion of Students with Exceptional Needs

School personnel may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than ten cumulative school days in that same school year for separate incidents of misconduct.(34C.F.R. § 300.530.)

NOTE: While the Code of Federal Regulations allows for removal of up to ten consecutive days, the California Education Code section 48911 allows only five consecutive days of suspension.

NOTE: A student with disabilities who is expelled from school is still entitled to a free appropriate public education.
(34C.F.R. § 300.530(d); Ed. Code, § 48915.5(b).)

F. Students Served in Nonpublic Schools or Regional Programs

Students with disabilities served in special day classes operated (a) by a certified nonpublic school or (b) by a regional provider are subject to the same suspension and expulsion guidelines contained in this document and pertinent Board of Education policies of the student's district of residence. Students enrolled in a county-operated Community School Program have slightly different procedures.

i. Nonpublic Schools

The site principal of a contracting nonpublic, nonsectarian school providing services to individuals with exceptional needs under Education Code sections 56365 and 56366, shall have the same duties and responsibilities with respect to the suspension of students with previously identified exceptional needs prescribed for the suspension of students under Education Code section 48911. (Ed. Code, § 48911.5.)

The nonpublic school shall have a written policy regarding suspension procedures, which includes a process for documenting actions that may lead to expulsion and a process for communicating with the district of residence. The student's district of residence is responsible for taking the team members through the manifestation determination review process. Should

the case move forward for further disciplinary action, the school personnel, and Board of Education of the student's district of residence shall conduct the necessary procedures.

ii. Regional Programs

When it is determined that a special education student enrolled in a regional (County) operated special day class has committed an act that prompts expulsion proceedings by the district of attendance, the Coordinator/Principal or his/her designee shall immediately, within 24 hours, notify the school district of residence by telephone to identify the expellable act and follow-up with a written report of the incident to the Superintendent/designee and the Special Education Administrator.

The Coordinator-Principal/administrator or designee will work cooperatively with the district of residence to schedule a Manifestation Determination IEP team meeting. The district of residence will determine the appropriate district IEP team representative(s) for the meeting. The Coordinator-Principal/administrator will identify County program staff necessary for the IEP team meeting and coordinate the notification of the meeting at least 48 hours in advance of the meeting.

G. Provision of a FAPE During Removal

i. "11th Day Services"

The State must ensure that all children with disabilities aged 3 through 21 residing in the State have the right to FAPE, including children with disabilities who have been suspended or expelled from school. (34 C.F.R. § 300.101.)

NOTE: In *Letter to Ramirez*, 113 LRP 3448 (OSEP December 5, 2012), the Office of Special Education Program opined that a hearing officer is *permitted*, but not required, to determine whether a student's conduct violated school rules.

The District does not need to provide services during periods of removal of a child with a disability who has been removed from his or her current placement for ten school days or less in that school year, if services are not provided to a child without disabilities who has been similarly removed. (34 C.F.R. § 300.530 (b)(1).)

In the case of a child with a disability who has been removed from his or her current placement for more than 10 school days in that school year, the District, for the remainder of the removals, or on the 11th day, must provide services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP. (34 C.F.R. §300.530 (b)(2), (d).)

For behavior that is not a manifestation of the child's disability and a change in placement occurs, services must be provided. (34 C.F.R. § 300.530 (d).)

NOTE: The student's IEP team determines the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP if the student is removed because of behavior that has been determined not to be a manifestation of the student's disability.

If the IEP team determines the behavior is a manifestation of the student's disability, the IEP team should determine if further services are required and conduct a function behavior

assessment and/or implement positive behavioral interventions and supports to address the student's needs.

The IEP team will make the determination of the appropriate interim alternative educational setting, if the removal is for drugs, weapons, or infliction of serious bodily injury offenses (34 C.F.R. § 300.530 (g)(2)(i)(ii)); or based on a hearing officer's determination that maintaining the current placement of the child is substantially likely to result in injury to the child or to others if he or she remains in the current placement. (34 C.F.R. § 300.532 (b)(2)(ii).)

H. Interim Alternative Educational Settings

School personnel may remove a student to an Interim Alternative Education Setting ("IAES") setting for not more than forty-five school days without regard to whether the behavior is determined to be a manifestation of the student's disability if the student:

1. Carries a weapon to or possesses a weapon 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, 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 District; or
3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the District.

"Serious bodily injury" is defined as "bodily injury which involves a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty." (18 U.S.C. § 1365 (h)(3).) "Serious bodily injury" is not simply a cut, abrasion, bruise, burn, or disfigurement; physical pain; illness; or impairment of the function of a bodily member, organ, or mental faculty. (18 U.S.C. § 1365 (h)(4).)

The IEP team will determine the appropriate alternative education setting and services for this placement. (34C.F.R. § 300.531.)

Parents may appeal the Alternative Education Setting or Manifestation Determination decision by requesting a hearing through the complaint process. (34C.F.R. § 300.532.)

The District may appeal the decision if they believe maintaining the current placement of the child is substantially likely to result in injury to the child or others by requesting a hearing through the complaint process. (34C.F.R. § 300.532.)

I. Manifestation Determination Review

If the child is removed from their current placement the current removal is NOT for more than ten cumulative school days AND is therefore NOT a change in placement (as detailed below), a Manifestation Determination Review is not required. However, the Student is still entitled to receive a FAPE, and school personnel must consult with at least one of the child's teachers to determine the extent to which services are needed to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the

goals set out in the child's IEP. (34 C.F.R. § 300.530(d)(4).)

Manifestation Determination Reviews must be conducted for students with a disability when a change of placement occurs, i.e., the student has been removed for more than ten cumulative days. A change in placement occurs if:

- The removal is for more than ten consecutive days; or
- the child has been subjected to a series of removals that constitute a pattern—
 - because the series of removals total more than 10 days in a school year;
 - because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
 - because of such additional factors such as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.
- The District determines on a case-by-case basis whether a pattern of removals constitutes a change in placement. This determination is subject to review through due process or judicial proceedings.

(34 C.F.R. § 300.536.)

Per federal regulations (34C.F.R. § 300.530(e-g)), a Manifestation Determination Review must occur within ten 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 District, the parent, and relevant members of the child's IEP Team (as determined by the parent and the District) must 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.

NOTE: A written report of the "review" is provided to the parent at the IEP meeting. The following SELPA forms must be utilized in conducting Manifestation Determination Reviews. See the IEP Manual for directions on how to complete these forms:

- Notice of Manifestation Determination Review IEP Team Meeting (IEP Meeting Notice)
- Notice of Procedural Safeguards
- Manifestation Determination Review pages 1-3
- IEP Amendment
- IEP Team Meeting Comments/Continuation Page

NOTE: Any formal reports referenced in the review and the cumulative records should be available to the parents and the IEP team at the meeting. If any existing assessment is more than 2 years old or if adequate information is not available to make a manifestation determination, the IEP team may wish to initiate a formal pre-expulsion assessment. The District must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors, and include information about social and emotional status in the assessment report.

It is the responsibility of the IEP team 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 District's failure to implement the IEP.**

If the IEP team determined that the violation was not a manifestation of the student's disability and was not the direct result of failure to implement the IEP, school personnel will apply relevant disciplinary procedures in the same manner and duration as would be applied to a student without a disability. (34 C.F.R. § 300.530(c).)

The conduct must be determined to be a manifestation of the child's disability if the District, the parent/guardian, and relevant members of the child's IEP Team determine that either of the above conditions were met. If this determination was made, the District must take immediate steps to remedy those deficiencies by either of the following actions:

- Conduct a functional behavioral assessment, unless the District had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; **or**
- If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior.
- **In addition**, except as provided in special circumstances allowing for placement in an interim alternative education setting, return the child to the placement from which the child was removed, unless the parent and the District agree to a change of placement as part of the modification of the behavioral intervention plan.

J. Conducting a Functional Behavioral Assessment

Either before or not later than 10 school days after either first removing the child for more than 10 cumulative school days in a school year or commencing a removal that constitutes a change of placement (e.g., expulsion), if the District did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the child before the behavior that resulted in the removal from school, the agency shall convene an IEP meeting to develop an assessment plan.

As soon as practicable after developing the assessment plan, the District shall convene an IEP meeting to develop appropriate behavioral interventions to address that behavior and shall implement those interventions. If the child already has a behavioral intervention plan, the IEP team shall meet to review the plan and its implementation and modify the plan and its implementation as necessary to address the behavior. (34C.F.R. § 300.530(e).)