

DISCIPLINE

Overview

Without the agreement of the parents or a court order, a special education student may not be removed for more than 20 cumulative days in a school year or five consecutive days except under special circumstances (see below.). After 10 cumulative school days, an IEP meeting should be held and alternative educational services instituted.

Schools have an obligation to protect the health and safety of all students. Should there be a serious violation of conduct by a special education student, the same guidelines that apply to general education students should be used when deciding when to summon law enforcement officials to respond to the situation.

Under special circumstances a special education student who brings a weapon to school, knowingly possesses a controlled substance or inflicts serious bodily injury may be placed in an alternative educational placement for forty-five (45) days without parental concurrence.

Definitions
<u>Disciplinary removal is the removal of a student from ongoing instruction for adjustment purposes.</u> Students are "removed" when they cannot continue to progress in the general curriculum and receive the services specified on their IEP and/ or participate with non-disabled children to the extent they would have in their current placement.
Removals may include:
Suspensions
In-school suspensions
Bus suspensions
Expulsions
A removal is a change of placement when it:
Is for more than 10 consecutive school days.
Is for more than 10 cumulative school days and constitutes a pattern. When determining if a pattern of removals is present the team should consider if the disciplinary violations are substantially similar to previous incidents resulting in removal, total amount of time the student has been removed and the proximity of the removals to each other.

Reasons for Removal

Disciplinary removals may be issued for:

- Causing, attempting to cause or threatening to cause physical injury to another person, or willfully using force or violence on the person of another, except in self-defense.
- Possessing, selling, furnishing, or using any firearm, knife, explosive or other dangerous object.
- Possessing, selling, furnishing, using or being under the influence of any controlled substance, including alcohol or any intoxicant, including Soma.
- Unlawfully offered, arranged, or negotiated to sell any controlled substance, alcohol or intoxicant.
- Committing or attempting to commit robbery or extortion.
- Causing or attempting to cause damage to school property or private property.
- Stealing or attempting to steal school property or private property.
- Possessing or using tobacco or products containing tobacco or nicotine.
- Committing an obscene act or engaging in habitual profanity or vulgarity.
- Unlawfully possessing or offering, negotiating, or negotiating to sell any drug paraphernalia.
- Disrupting school activities or defying valid authority of school staff engaged in the performance of their duties.
- Knowingly receiving stolen property or private property.
- Possessing an imitation firearm.
- Committing or attempting to commit a sexual assault or committing sexual battery.
- Harassing, threatening, or intimidating a complaining witness or witnesses in a school disciplinary proceeding.
- Robbery or extortion.
- Engaged in or attempted to engage in hazing.
- Engaged in an act of bullying, defined as any severe or pervasive physical or verbal act or conduct, including communications made in writing or by means of an electronic act that can reasonably be predicted to place a student in fear of harm for himself or his property, experience substantially detrimental effects on physical or mental health, causes substantial interference with academic performance or experience substantial interference with ability to participate in or benefit from services, activities, or privileges provided by a school
- Sexual harassment
- Caused, attempted to cause, or participated in an act of hate violence.
- Harassment severe enough to create a hostile educational environment.
- Making terroristic threats

Length of Disciplinary Removals

In California, a school administrator may suspend a student who commits a serious offense for up to 5 days. The Superintendent or designee may extend the student's suspension so that the total number of days suspended does not exceed 10 consecutive school days. The extension of suspension may only be imposed if the Superintendent or designee has determined, following a meeting to which the student and the student's parent are invited to participate, that the presence of the student at the school or in an alternative school placement would cause a danger to persons or property or a threat of disrupting the instructional process. If the student or the student's parent requests a meeting to discuss the original suspension, the Superintendent may determine at that meeting whether to extend the suspension.

The Superintendent may also decide to extend the suspension pending expulsion. Parents must be notified on the day this decision is made. They should be given a copy of their procedural due process rights at this time. The IEP team that meets to make the manifest determination does not expel students, nor do they recommend that students be expelled. The IEP team determines whether the student may be disciplined like a non-disabled student. Also note that regardless of the outcome of the Superintendent's decision and recommendation to the Board, IEP services to a student with a disability must begin on the eleventh day of removal.

Types of Disciplinary Removals	
Removal Type 1	<p>Short-term removals of 10 days or fewer in a school year.</p> <ul style="list-style-type: none"> • The same disciplinary procedures apply to special education students as to general education students. • A teacher or administrator may assign short-term removals without the concurrence of the parent and without having an IEP meeting. • The student has no right to educational services during the period(s) of removal.
Removal Type 2	<p>Short-term removals of more than 10 cumulative days not constituting a change in placement.</p> <ul style="list-style-type: none"> • General disciplinary rules apply in this situation, as well as special education provisions. • The student is entitled to educational services on the 11th day of suspension to enable the student to progress in the general curriculum and advance toward achieving IEP goals and objectives. • School personnel should consult with the special education service provider to determine the type of special education services to be provided to the student. These services must begin on the 11th day of suspension. • Within 10 days of the 11th day of suspension, an IEP team meeting must be held to determine if a behavior

Types of Disciplinary Removals	
	intervention plan needs to be instituted or changed. No manifest determination is required.
Removal Type 3	<p>Short-term removals of more than 10 cumulative days constituting a change in placement.</p> <ul style="list-style-type: none"> • A removal is a change of placement if it is (1) for more than 10 consecutive school days; (2) for more than 10 cumulative days and constitutes a pattern because of proximity and total time removed, and similarity of infractions and lengths of time removed. • For this type of removal, the student is entitled to educational services on the 11th day of removal. • An IEP team must determine the scope of services to be provided. • The IEP team must also determine if the infraction is a manifestation of the student's disability, and if a behavioral intervention plan must be instituted or changed. This IEP meeting must be held within 10 days of the 11th day of removal. Please note that the IEP team does not recommend students for expulsion. The team determines if the student may be disciplined like a non-disabled student. Only the school board on the recommendation of the superintendent may expel a student.
Removal Type 4	<p>Long-term removals of more than 10 consecutive days.</p> <ul style="list-style-type: none"> • The provisions in #3 (above) apply. • In addition, the IEP team may assign the student to an interim alternative education setting (IAES) if the infraction involved carrying a weapon to or at school, knowingly possessing, using or selling controlled substances at school or school functions or infliction of serious bodily harm on a person at school or at a school function. • Note that the 10-day requirement for holding an IEP is not waived for students who are incarcerated for their infractions. The IEP meeting must be held, with services or placements to commence upon the student's release.

Behavioral Interventions

For disciplinary removals of Types 2, 3, or 4 (above), an IEP team meeting must be held within 10 days of the 11th day of removal to address behavioral issues. If there is no existing behavioral intervention plan, the IEP team must conduct a functional behavioral assessment (FBA). This is a

federal requirement. The functional behavioral assessment can be conducted by reviewing existing data, or by developing an assessment plan to gather new information. If there is an existing behavioral intervention plan, the IEP team must determine if modifications to this plan are required.

Functional Behavior Assessment
Specifies amount and locations for observations
Requires medical, social and environmental information
May require observation and information from other settings
Requires description & frequency of alternate behaviors

Manifest Determination

The school staff must review the relationship between the student's disability and the behavior subject to the disciplinary action to determine whether the infraction was a manifestation of the disability. This meeting must be held within 10 school days after the decision to impose a removal that constitutes a change of placement (removal Types 3 and 4). The team must include qualified personnel who have information on the needs of the student as determined by the district and parent. The team must consider all relevant information, including:

- Information supplied by the parents
- Observations of the student
- The student's IEP and current placement
- Any teacher observations
- The student's IEP

The team must use the above information to determine if the conduct in question:

- Was caused by, or had a direct and substantial relationship to the student's disability; or
- Was a direct result of the district's failure to implement the IEP

Manifestation Determination Finding
If the team determines that: Either of the above conditions was true, then the student's behavior was a manifestation of his or her disability, and the student may not be disciplined and the student will return to the placement from which the student was removed, unless the parent and the school district agree to a change of placement as part of the modification of the behavioral intervention plan. The team must review any existing Behavior Intervention Plan and make adjustments or conduct a Functional Behavior Analysis to create a Behavior Intervention Plan if one is not already in place.

Neither of the above conditions was true, then the student's behavior was not a manifestation of his or her disability, the student **may be disciplined in the same manner as a student without disabilities**, including placing the student in an Interim Alternative Educational Setting.

Interim Alternative Education Settings

The IEP Team may place a student in an Interim Alternative Education Setting (IAES) for up to 45 school days if the conduct subject to discipline is determined not to be a manifestation of his or her disability, or under special circumstances, without making any determination of manifestation. Placement in the IAES must enable the student to continue to progress in the general curriculum and provide the special education services necessary to address the existing special education goals. In addition, the IAES must provide services and modifications that address the misconduct and are designed to prevent the behavior from recurring.

IAES Placement under Special Circumstances

In order for the District to place a student in an Interim Alternative Educational Setting without first determining if the conduct was a manifestation of a disability, the conduct in question must meet one of the following criteria:

- The student carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of any State or local educational agency. A weapon is defined as any weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, but not including a pocket knife with a blade of less than 2 ½ inches in length.
- The student knowingly possesses or uses illegal drugs or sells a controlled substance while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency. An illegal drug is defined as a controlled substance but does not include a controlled substance that is legally possessed or under the supervision of a licensed health-care professional or that is legally possessed or under any other authority of the Controlled Substances Act or any other provision of Federal law. A controlled substance is defined as a drug or other substance identified under schedule I,II,III, IV, or V in section 202© of the Controlled Substances Act (21 U.S.C. 812(c)).
- The student inflicts serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency. Serious bodily injury is defined as a 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.

Appeal of Team Decision

The parent of a student with a disability may request an expedited due process hearing if he/she disagrees with the manifestation determination or with the placement in an Interim Alternative Educational Setting. The Office of Administrative Hearings will hear the case within 20 days. While the parent's due process hearing request is pending resolution, the student will remain in

his or her interim alternative educational placement until a decision by the administrative law judge or until the expiration of the disciplinary placement, whichever occurs first, unless the parent and the District agree otherwise. The Hearing Officer will determine whether the student remains in the Interim Alternative Educational Setting or returns to the placement from which he or she was removed.

Discipline of Students Not Yet Eligible for Special Education Services

A student who has not been determined to be a student with special needs and who engaged in a behavior subject to disciplinary removal may assert IDEA protections if the district had knowledge that the student was disabled before the behavior occurred. The district shall be deemed to have knowledge that the student had a disability if one of the following conditions exists:

- The parent or guardian had expressed concern in writing, to supervisory or administrative personnel, or to a teacher of the student that the student was in need of special education or related services; and
- The parent or guardian had requested an initial evaluation of the student for special education pursuant to federal law; or
- The teacher of the student or other district personnel has expressed specific concern about a pattern of behavior demonstrated by the student to the district's Director of Special Education or to other supervisory personnel.

The district would be deemed to not have knowledge, as specified above, if the parent or guardian had not allowed an initial evaluation of the student or had refused services, or if the student had been evaluated and it was determined that the student was not a child with a disability.

If it is determined that the district did not have knowledge that the student was disabled prior to taking disciplinary action against the student, then 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 evaluation will be conducted in an expedited manner. Until the evaluation is completed, the student will remain in the educational placement determined by the school authorities. If the student is found to be not eligible for special education services, the parent may file for due process to contest the decision, but the student continues to be subject to disciplinary measures as a student without special needs.

Disciplinary Removals of Section 504 Students

Students considered disabled under Section 504 of the Rehabilitation Act of 1973 are entitled to the same disciplinary protections as students who are eligible for special education. Districts must maintain a formal written policy for discipline of Section 504 students, along with other Section 504 policies. Appeals of Manifestation Determination decisions and placement decisions may be made according to district guidelines for 504 students.

References

EC 48925

EC 48900.2

EC48900.3

EC 48900.4

EC 48900.7

EC 48911

CFR 300.530

CFR 300.50420 USC1415