



## **Chapter 11: Suspension and Expulsion Procedures**

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## **Introduction**

The guidelines in this section are not binding for local education agencies (LEAs) or other entities except for the statutes, regulations, and court decisions that are referred herein. The information provided is taken from the California School Boards Association (CSBA) Board and Administrative Policy.

School administrators are presented with complex disciplinary issues. Some of these situations involve students with disabilities who are entitled to certain protections under the Individuals with Disabilities Education Act (IDEA).

The Association of California School Administrators (ACSA) Suspension/Expulsion Handbook is a tool to develop LEA procedures for disciplining students with disabilities. The handbook provides step-by-step directions and sample forms that have been developed by LEAs and attorneys, and cites relevant sections of applicable laws and regulations.

## **Section A - Suspension and Expulsion/Due Process (Students with Disabilities)**

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

## **Section B – Procedures for Students Not Yet Eligible for Special Education Services**

A student who has not been officially identified as a student with disabilities pursuant to IDEA and who has engaged in behavior that violated the LEA's code of student conduct may assert any of the protections under IDEA only if the LEA had knowledge that the student is disabled before the behavior that precipitated the disciplinary action occurred. *20 U.S.C. 1415(k)(5); 34 C.F.R. 300.534*

The LEA shall be deemed to have knowledge that the student has a disability if: *(20 U.S.C. 1415(k)(5); 34 C.F.R.300.534)*

1. The parent/guardian has expressed concern in writing to district supervisory or administrative personnel or to a teacher of the student, that the student is in need of special education or related services; and the parent/guardian has requested an evaluation of the student for special education pursuant to 34 C.F.R. 300.300-300.311; or
2. The teacher of the student or other LEA personnel has expressed specific concerns directly to the LEA director of special education or to other supervisory LEA personnel about a pattern of behavior demonstrated by the student.

The LEA 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, has refused services, or revokes

consent after consenting to the initial provision of services for their child. In addition, the LEA would be deemed to not have knowledge if the LEA conducted an evaluation pursuant to 34 C.F.R. 300.300-300.311 and determined that the student was not an individual with a disability. When the LEA is deemed to not have knowledge of the disability, the student shall be disciplined in accordance with procedures established for students without disabilities who engage in comparable behavior. *20 U.S.C. 1415(k)(5); 34 C.F.R. 300.534*

If a request is made for an evaluation of a student during the time period in which the student is subject to disciplinary measures, pursuant to 34 C.F.R. 300.530, 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 administrators. *20 U.S.C. 1415(k)(5); 34 C.F.R. 300.534*

## **Section C – Suspension**

The superintendent or designee may suspend a student with a disability for up to 10 consecutive school days for a single incident or 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 pursuant to *34 C.F.R. 300.536. E.C. 48903; 34 C.F.R. 300.530*

The principal or designee shall monitor the number of days, including portions of days, in which a student with a valid individualized education program (IEP) has been suspended during the school year.

The LEA shall determine, on a case-by-case basis, whether a pattern of removals of a student from his/her current educational placement for disciplinary reasons constitutes a change in placement. A change in placement shall be deemed to have occurred under any of the following circumstances: (*34 C.F.R. 300.536*)

1. The removal is for more than 10 consecutive school days.
2. The student has been subjected to a series of removals that constitute a pattern because of all of the following:
  - a. The series of removals total more than 10 school days in a school year.
  - b. The student's behavior is substantially similar to his/her behavior in previous incidents that resulted in the series of removals; and
  - c. Additional factors, such 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, indicate a change of placement.

If the removal has been determined to be a change in placement as specified in items #1-2 above, the student's IEP team shall determine the appropriate educational services. *34 C.F.R. 300.530*

D/M SELPA Form 122 (Special Education Suspension Review) may be used by the LEA in determining whether or not a series of removals constitutes a change of placement.

## **Section D – Services During Suspension**

Any student suspended for more than 10 school days in the same school year shall continue to receive services during the term of the suspension. School personnel, in consultation with at least one of the student's teachers, shall determine the extent to which services are needed as provided in 34 C.F.R. 300.101(a), so as to enable the student to continue to participate in the general education curriculum in another setting and to progress toward meeting the goals as set out in his/her IEP (*20 U.S.C. 1412(a)(1)(A); 34 C.F.R. 300.530*). The student must also receive, as appropriate, a functional behavioral assessment, and behavior intervention services or modifications designed to address the behavior so that it does not recur.

If a student with disabilities is excluded from school bus transportation, the student shall be provided with an alternative form of transportation at no cost to the student or his/her parent/guardian, provided that transportation is specified in his/her IEP. *E.C. 48915.5*

## **Section E – Interim Alternative Educational Placement Due to Dangerous Behavior**

The LEA may place a student with a disability in an appropriate interim alternative educational setting (IAES) for up to 45 school days, without regard to whether the behavior is a manifestation of the student's disability, when the student commits one of the following acts while at school, or at a school-related function: (*20 U.S.C. 1415(k)(1)(G); 34 C.F.R. 300.530*)

1. Carries or possesses a weapon, as defined in 18 U.S.C. 930 going to or at school or a school-related function.
2. Knowingly possesses or uses illegal drugs.
3. Sells or solicits the sale of a controlled substance as identified in 21 U.S.C. 812(c), Schedules I-V.
4. Inflicts serious bodily injury upon another person as defined in 18 U.S.C. 1365.

The student's interim alternative educational setting shall be determined by his/her IEP team. *20 U.S.C. 1415(k)(1)(G); 34 C.F.R. 300.531*

## Section F – Manifestation Determination

On the date the decision to take disciplinary action is made, the parents/guardians of the student shall be notified of the decision and provided the procedural safeguards notice pursuant to *34 C.F.R. 300.504. 20 U.S.C. 1415(k)(1)(H); 34 C.F.R. 300.530*

A student who has been removed from his/her current placement because of dangerous behavior shall receive services to the extent necessary to allow him/her to participate in the general education curriculum and to progress toward meeting the goals set out in his/her IEP. As appropriate, the student shall also receive a functional behavioral assessment and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. *20 U.S.C. 1415(k)(1)(D); 34 C.F.R. 300.530*

The following procedural safeguards shall apply when a student is suspended for more than 10 consecutive school days, when a series of removals of a student constitutes a pattern, or when a change of placement of a student is contemplated due to a violation of the LEA's code of conduct:

1. Notice: On the date the decision to take disciplinary action is made, the parent/guardian of the student shall be notified of the decision and provided the procedural safeguards notice pursuant to *34 C.F.R. 300.504. 20 U.S.C. 1415(k)(1)(H); 34 C.F.R. 300.530*
2. Manifestation Determination Review: Immediately if possible, but in no case later than 10 school days after the date the decision to take disciplinary action is made, a manifestation determination review shall be made of the relationship between the student's disability and the behavior subject to the disciplinary action. *20 U.S.C. 1415(k)(1)(E); 34 C.F.R. 300.530*

At the manifestation determination review, the LEA, the student's parent/guardian, and relevant members of the IEP team (as defined by the LEA and parent/guardian) shall review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents/guardians, to determine whether the conduct in question was either of the following: (*20 U.S.C. 1415(k)(1)(E); 34 C.F.R. 300.530*)

- a. Caused by or had a direct and substantial relationship to the student's disability.
- b. A direct result of the district's failure to implement the student's IEP, in which case the district shall take immediate steps to remedy those deficiencies. (D/M SELPA Form 68P)

If the manifestation review team determines that a condition in either #a or #b above was met, the conduct shall then be determined to be a manifestation of the student's disability. *20 U.S.C. 1415(k)(1)(E); 34 C.F.R. 300.530*

3. Determination that behavior is a manifestation of the student's disability: When the conduct has been determined to be a manifestation of the student's disability, the IEP team shall conduct a functional behavioral assessment, unless a functional behavioral assessment had been conducted before the occurrence of the behavior that resulted in the change of placement, and shall implement a behavioral intervention plan for the student. If a behavior intervention plan has already been developed, the IEP team shall review the

behavioral intervention plan and modify it as necessary to address the behavior. *20 USC 1415(k)(1)(F); 34 CFR 300.530*

The student shall be returned to the placement from which he/she was removed, unless the parent/guardian and LEA agree to a change of placement as part of the modification of the behavioral intervention plan. *20 U.S.C. 1415(k)(1)(F); 34 C.F.R. 300.530*

4. Determination that Behavior is Not a Manifestation of the Student's Disability: If the manifestation determination review team determines that the student's behavior was not a manifestation of his/her disability, the student may be disciplined in accordance with procedures for students without disabilities. *20 U.S.C. 1415(k)(1)(D); 34 C.F.R. 300.530*

The student shall receive services to the extent necessary to participate in the general education curriculum in another setting and to allow him/her to progress toward meeting the goals set out in his/her IEP. As appropriate, the student shall also receive a functional behavioral assessment and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. *20 U.S.C. 1415(k)(1)(D); 34 C.F.R. 300.530*

## **Section G – Due Process Appeals**

If the parent/guardian disagrees with any LEA decision regarding placement under 34 C.F.R. 300.530 (suspension for greater than 10 school days in the same school year and removal for dangerous circumstances) or 34 C.F.R. 300.531 (interim alternative educational setting), or the manifestation determination under 34 C.F.R. 300.530(e), he/she may appeal the decision by requesting a hearing. The LEA may request a hearing if the LEA believes that maintaining the student's current placement is substantially likely to result in injury to the student or others. In order to request a hearing, the requesting party shall file a complaint pursuant to 34 C.F.R. 300.507 and 300.508(a) and (b). *20 U.S.C. 1415(k)(3); 34 C.F.R. 300.532*

Whenever a hearing is requested as specified above, the parent/guardian or the LEA shall have an opportunity for an expedited due process hearing consistent with requirements specified in 34 C.F.R. 300.507, 300.508(a)-(c), and 300.510-300.514.

If the student's parent/guardian or the LEA has initiated a due process hearing under 34 C.F.R. 300.532 as detailed above, the student shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in 34 C.F.R. 300.530(c) or (g), whichever occurs first, unless the parent/guardian and LEA agree otherwise. *20 U.S.C. 1415(k)(4); 34 C.F.R. 300.533*

## **Section H – 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.

## **Section I – 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. *E.C. 48917*

## **Section J – Notification of Law Enforcement Authorities**

Prior to the suspension or expulsion of any student with a disability, the principal or designee shall notify appropriate city or county law enforcement authorities of any act or assault with a deadly weapon which may have violated Penal Code 245. *E.C. 48902*

The principal or designee shall notify appropriate city or county law enforcement authorities of acts by any student with a disability which may involve the possession or sale of narcotics or of a controlled substance or possession of weapons or firearms in violation of Penal Code 626.9 and 626.10. *E.C. 48902*

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 E.C. 48900(c) or (d), relating to the possession, use, offering or sale of controlled substances, alcohol or intoxicants of any kind. *E.C. 48902*

## **Section K – Report to County Superintendent of Schools**

The superintendent or designee shall report to the County Superintendent when any special education student has been expelled or suspended for more than 10 school days. The report shall include the student's name, last known address, and the reason for the action. *E.C. 48203*

# APPENDIX A: SELPA Form D/M 122 – Special Education Suspension Review

DESERT/MOUNTAIN SPECIAL EDUCATION LOCAL PLAN AREA  
 DESERT/MOUNTAIN CHARTER SPECIAL EDUCATION LOCAL PLAN AREA  
 17800 HIGHWAY 18 • APPLE VALLEY, CA 92307  
 (760) 552-6700 • (760) 242-5363 FAX



**Special Education Suspension Review**  
 (School Year \_\_\_\_\_)

**STUDENT INFORMATION**

Student Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_ Gender:  Male  Female  
 School Site: \_\_\_\_\_ Grade: \_\_\_\_\_  
 District of Attendance: \_\_\_\_\_ District of Residence: \_\_\_\_\_  
 Current special education placement/services: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**SUMMARY OF REMOVALS FROM EDUCATIONAL PLACEMENT DURING CURRENT SCHOOL YEAR**

**Directions:** Upon completion of the information below, forward the complete packet to the director of special education.

	Date	EC Violation No.	Description of Infraction	No. of Days/ Accumulated No. of Days
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				

The above information was completed by: \_\_\_\_\_  
 Name Title \_\_\_\_\_ Date \_\_\_\_\_

**TO BE COMPLETED BY DIRECTOR OF SPECIAL EDUCATION SERVICES**

A review of the student's removals from his/her education placement totaling \_\_\_\_\_ days for the current school year has been conducted. Consideration was given to:

- whether the behavior is "substantially similar" across incidents
- the length of each removal fillable form
- the total number of removals
- the proximity of removals to one another

and the following determination was made:

The series **DOES NOT** constitute a pattern – no change of placement. (NOTE: Must complete and attach form D/M 124)  
 The series **DOES** constitute a pattern – change of placement.

Special Education Director Signature: \_\_\_\_\_ Date: \_\_\_\_\_



# APPENDIX B: SELPA Form D/M 124 – Educational Services During School Suspension

DESERT/MOUNTAIN SPECIAL EDUCATION LOCAL PLAN AREA DESERT/MOUNTAIN CHARTER SPECIAL EDUCATION LOCAL PLAN AREA 17800 HIGHWAY 18 • APPLE VALLEY, CA 92307 (760) 532-6700 • (760) 242-5363 FAX			
<b>Educational Services During School Suspension</b>			
<b>STUDENT INFORMATION</b>			
Student Name:	Date of Birth:	Gender:	<input type="checkbox"/> Male <input type="checkbox"/> Female
School Site:			Grade:
District of Attendance:	District of Residence:		
Parent/Guardian:			
Home Phone:	Work Phone:	Other Phone:	
Street Address:	City:	State:	Zip Code:
Mailing Address:	City:	State:	Zip Code:
<b>DIRECTIONS: COMPLETE THIS FORM FOR <u>EACH</u> STUDENT SUSPENSION BEYOND 10 CUMULATIVE DAYS DURING A SCHOOL YEAR THAT DOES NOT CONSTITUTE A CHANGE OF PLACEMENT.</b>			
<b>PROPOSED DATE(S) OF SUSPENSION:</b> _____			
<b>CURRENT SPECIAL EDUCATION PLACEMENT:</b> _____			
A review of educational performance of the above-named student was conducted in consultation with at least one of the student's teachers. This review considered the extent educational services are necessary during the proposed dates of suspension to ensure:			
<ul style="list-style-type: none"> <li>• The student appropriately progresses in the general curriculum.</li> <li>• The student appropriately advances toward achieving the goals and objectives set out in his/her current IEP.</li> <li>• As appropriate, the student receives a functional behavioral assessment and behavioral intervention services or modifications to an existing plan designed to address the behavior so that it does not recur.</li> </ul>			
In light of these considerations, the following determination was made:			
<input type="checkbox"/>	A continuation of educational services is not necessary during the period of this suspension.		
<input type="checkbox"/>	Allow the student to make-up missed assignments and exams.		
<input type="checkbox"/>	Provide an opportunity for the student to make arrangements with his/her teachers to do work at home during the period of suspension.		
<input type="checkbox"/>	Refer to IEP Team to initiate behavior intervention services.		
<input type="checkbox"/>	Other: _____		
_____			
Special Education Teacher Signature:		Date:	
Site Administrator Signature:		Date:	

# APPENDIX C: Suspension Flowchart

Type 1	Type 2	Type 3	Type 4						
<p>Short term removals of 10 days or less</p> <p><b>EDUCATIONAL SERVICES</b></p> <p>A school district need not provide services during periods of removals for 10 school days or less if services are not provided to non-disabled children who have been similarly removed.</p> <p>Note: Partial days of removal are to be considered in making the change of placement determination (<i>SELPA Form D/M 122</i>). Suspension from transportation resulting in missed school days counts as days of removal if special transportation is included in the student's IEP.</p>	<p>A series of short term removals totaling more than 10 cumulative days that does not form a pattern</p> <p><b>No Change in Placement</b></p> <p><b>EDUCATIONAL SERVICES</b></p> <p>On the 11<sup>th</sup> day and for each subsequent incident of removal, district personnel in consultation with at least one of the child's teachers must</p> <p>1) <u>Provide educational services</u> to the extent necessary to (<i>SELPA Form D/M 124</i>) –</p> <ul style="list-style-type: none"> <li>• Enable the child to participate in the general curriculum</li> <li>• Enable the child to progress toward meeting the goals in the child's IEP</li> <li>• Allow the child to receive, as appropriate, a functional behavioral assessment and behavioral intervention services or modifications designed to address the behavior so that it does not recur</li> </ul> <p>2) Determine if a change of placement has occurred when considering (<i>SELPA Form D/M 122</i>):</p> <ul style="list-style-type: none"> <li>• If the behavior is "substantially similar" across incidents,</li> <li>• The length of each removal,</li> <li>• The total number of removals,</li> <li>• The proximity of the removals to one another.</li> </ul>	<p>A series of short term removals totaling more than 10 days that does form a pattern</p> <p><b>Change of Placement</b></p> <p><b>Note:</b> On the date of the decision to make a removal that constitutes a <b>change of placement</b>, the district must notify the parents and provide them a copy of the Procedural Safeguards (<i>SELPA Form D/M 77</i>).</p> <p><b>MANIFESTATION DETERMINATION</b> (<i>SELPA Forms D/M 68P</i>)</p> <p>Within <b>10 school days</b> of any decision to change the placement of a child with a disability, the district, the parent, and "relevant members" of the IEP Team must review:</p> <ul style="list-style-type: none"> <li>• all relevant information in the student's file</li> <li>• the child's IEP</li> <li>• any teacher observations</li> <li>• any relevant information provided by the parents</li> </ul> <p>This information is used in reviewing the relationship between the child's disability and the behavior subject to disciplinary action. The team described above must determine:</p> <ul style="list-style-type: none"> <li>• if the conduct in question was caused by the child's disability, or</li> <li>• if the conduct in question had a direct and substantial relationship to the child's disability, or</li> <li>• if the conduct in question was the direct result of the district's failure to implement the IEP.</li> </ul> <table border="1" data-bbox="1045 1101 1717 1383"> <thead> <tr> <th colspan="2" data-bbox="1045 1101 1717 1123">Was the student's behavior a manifestation of his/her disability?</th> </tr> <tr> <th data-bbox="1045 1123 1402 1172">YES</th> <th data-bbox="1402 1123 1717 1172">NO</th> </tr> </thead> <tbody> <tr> <td data-bbox="1045 1172 1402 1383">                     Terminate further disciplinary action, and –                     <ul style="list-style-type: none"> <li>• Conduct a functional behavioral assessment and implement a behavior support plan, or</li> <li>• Review and modify, as necessary, an existing behavioral support plan.</li> </ul> </td> <td data-bbox="1402 1172 1717 1383">                     Apply relevant disciplinary procedures in the same manner as applied to non-disabled students.                       The IEP Team determines the provision of educational services as described in column two (Type 2 removals)                 </td> </tr> </tbody> </table>	Was the student's behavior a manifestation of his/her disability?		YES	NO	Terminate further disciplinary action, and – <ul style="list-style-type: none"> <li>• Conduct a functional behavioral assessment and implement a behavior support plan, or</li> <li>• Review and modify, as necessary, an existing behavioral support plan.</li> </ul>	Apply relevant disciplinary procedures in the same manner as applied to non-disabled students.  The IEP Team determines the provision of educational services as described in column two (Type 2 removals)	<p>A <u>long term</u> removal of 10 days or more consecutive days</p> <p><b>Change of Placement</b></p>
Was the student's behavior a manifestation of his/her disability?									
YES	NO								
Terminate further disciplinary action, and – <ul style="list-style-type: none"> <li>• Conduct a functional behavioral assessment and implement a behavior support plan, or</li> <li>• Review and modify, as necessary, an existing behavioral support plan.</li> </ul>	Apply relevant disciplinary procedures in the same manner as applied to non-disabled students.  The IEP Team determines the provision of educational services as described in column two (Type 2 removals)								

# APPENDIX D: SELPA Form 68P - Manifestation Determination

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Student Name:	DOB:	Date:
<b>MANIFESTATION DETERMINATION</b>		
Student's Age:	Grade:	Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female
School Site:	LEA of Attendance:	
<b>SUMMARY OF STUDENT'S ALLEGED MISCONDUCT:</b>		
<b>REVIEW OF RELATIONSHIP BETWEEN DISABILITY AND BEHAVIOR SUBJECT TO DISCIPLINARY ACTION:</b>		
Summary of evaluation and diagnostic results and relevant information in the student's file: <i>(include information presented by parents)</i>		
Summary of observations:		
Current IEP placement/services:		

Student Name: \_\_\_\_\_ DOB: \_\_\_\_\_ Date: \_\_\_\_\_

**MANIFESTATION DETERMINATION**

<b>MANIFESTATION DETERMINATION TEAM BASED ON THE PRECEDING REVIEW OF RELATIONSHIP BETWEEN DISABILITY AND BEHAVIOR SUBJECT TO DISCIPLINARY ACTION:</b>			
a.	Was the conduct in question caused by or directly and substantially related to the student's disability? 34 CFR § 300.530(e)(1)(i)	No <input type="checkbox"/>	Yes <input type="checkbox"/>
b.	Was the conduct in question the direct result of the LEA's failure to implement the IEP? 34 CFR § 300.530 (e)(1)(ii)	No <input type="checkbox"/>	Yes <input type="checkbox"/>
Checking YES in a or b will result in a determination that the student's behavior was a manifestation of his/her disability.			
<b>THE MANIFESTATION DETERMINATION TEAM FINDS:</b>			
<input type="checkbox"/> The student's behavior was not a manifestation of his/her disability. <i>Forward for appropriate disciplinary action.</i>			
<input type="checkbox"/> The student's behavior was a manifestation of his/her disability. <i>Terminate further disciplinary action and conduct the following via the IEP process with required IEP team members.</i>			
<input type="checkbox"/> Functional behavioral assessment and implement a behavior intervention plan, OR		<input type="checkbox"/> Continue educational program as per current IEP	
<input type="checkbox"/> Review and modify an existing behavior intervention plan as necessary		<input type="checkbox"/> Schedule follow-up IEP to consider special education program alternatives	
<b>THE FOLLOWING INDIVIDUALS PARTICIPATED IN THIS MANIFESTATION DETERMINATION REVIEW MEETING:</b>			
LEA Representative	Date	Other/Title	Date
Special Education Teacher	Date	Other/Title	Date
Psychologist	Date	Other/Title	Date
General Education Teacher	Date	Other/Title	Date
Initial	I have been advised of and given a copy of Special Education Procedural Safeguards/Parents Rights this school year.		Date
Initial	The Manifestation Determination Review has been interpreted orally by (when appropriate):		Date
Initial	I request a copy of this Manifestation Determination Review to be provided in my primary language.		Date
Parent	Date	Student	Date
Parent	Date		
Comments: _____			

Student Name:	DOB:	Date:
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**MANIFESTATION DETERMINATION**

**Meeting Notes**