

SUSPENSION & EXPULSION

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SUSPENSION AND EXPULSION

9.1 Discipline

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

A student with a disability can be expelled for violation of school conduct codes only when certain procedural safeguards are followed.

If an action is contemplated regarding behavior resulting in consideration for expulsion or involving a removal that constitutes a change of placement, the parents must be notified of that decision no later than the date on which the decision to take that action is made.

Immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, the IEP team must meet to review the relationship between the student's disability and the behavior subject to the disciplinary action. (27 EC 48915.5)

9.2 Suspension

The superintendent or designee may suspend a student with a disability for up to 5 consecutive school days for a single incident of misconduct and up to 20 school days in a school year. However an additional 10 days is allowed for reassignment for purposes of readjustment.

The principal or designee shall monitor the number of days, including portions of days that students with valid IEPs have been suspended during the school year.

9.3 Best Practices - A Proactive Approach to Suspension

If a special education student begins to show a pattern of suspensions:

- Notify your Program Supervisor immediately
- Discuss, implement, and **document** a variety of school-based interventions such as: IEP behavioral goals, School Counselor interaction, social skills group, counseling, parent contact, a Behavior Support Plan (BSP), Psych counseling, peer buddies, etc.

If a special education student accumulates 7-8 suspensions in one school year, the school should convene an IEP meeting:

- Discuss, and document in the IEP, appropriate services should the student go beyond 10 days of suspension (e.g. 1 hour per day of home instruction)
- Review the documentation of the variety of school-based interventions that have been implemented

What to do on Day 11

No special education services are required during the first 10 days of suspension; however, on cumulative Day 11 of suspension, and every day thereafter, a special education student is entitled to services.

- If not discussed and documented at a previous meeting, the IEP team **MUST** convene to discuss what services are necessary, **PRIOR** to offering services.
- The District typically offers 1 hour per day of 1:1 home tutoring, however each student must be discussed individually with parent input considered and documented. The law requires that a student be given the opportunity to access and make some progress both on goals and on the general education curriculum. The court has upheld the notion that with intense 1:1 instruction for one hour a day, a student can make as much progress as in a class with a 30:1 ratio for 6 hours a day **AND** the student has the rest of the day at home to work on homework and practice.
- The Day 11 IEP and the Manifestation Determination meetings may be combined, so long as the timelines are met.
- The Case Carrier should contact the special education office to arrange home instruction, if deemed the appropriate Day 11 service by the IEP team. The District should provide make-up if the service does not begin on time.

9.4 Services during Suspension

Students suspended for more than 10 cumulative school days in a school year shall continue to receive special education and related services as specified on their IEP during the period of suspension. This will enable the student to participate in the general curriculum and to progress toward meeting the goals in his/her IEP.

9.5 Transportation during Suspension

If a student with disabilities is excluded from transportation, the student is entitled to be provided with an alternative form of transportation at no cost to the student or parent/guardian, provided that transportation is specified on the IEP.

9.6 Procedural Safeguards

The following procedural safeguards shall apply when a student is suspended for more than 10 cumulative school days, when a student is placed in an interim alternative educational setting (IAES), or when a change of placement is contemplated. Not later than the date on which the decision to take action is made, the parents/guardians of the student shall be notified of the decision and provided the procedural safeguards notice.

9.7 Manifestation Determination

Within 10 school days of any decision to change the placement of a student with a disability, because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the IEP team (as determined by the parent and the LEA) 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 to determine:

- If the conduct in question was caused by, or had a direct and substantial relationship to the student's disability; or
- If the conduct in question was the direct result of the LEA's failure to implement the IEP.

If the LEA, the parent, and relevant members of the IEP team determine that either of the above is applicable for the student, the conduct shall be determined to be a manifestation of the student's disability.

9.7.A. Determination that Behavior is a Manifestation

In determining that the behavior is a manifestation of the student's disability, the IEP team must:

- Conduct a functional behavioral assessment (FBA) and implement a behavioral intervention plan if LEA has not conducted such assessment.
- In the situation where a behavioral intervention plan has been developed, review behavioral intervention plan and modify if necessary to address the behavior; and
- Except under special circumstances, return the student to the previous placement unless the parent and the LEA agree to a change of placement.

9.7.B. Determination that Behavior is NOT a Manifestation of the Disability

If the team determines that the behavior was **not** a manifestation of the disability:

- Student must continue to receive services to enable him/her to participate in the general curriculum and to progress toward meeting the goals in the IEP.

- If appropriate, receive a functional behavioral assessment, behavior intervention services and/or modifications that are designed to address the behavior so that it does not recur.

9.8 45–Day Removal to IAES (Special Circumstances)

School personnel may remove a student to an interim alternative educational setting (IAES) for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student’s disability, in cases where a student:

- Carries or possesses a weapon to or at school, on school premises, or at a school function under the jurisdiction of the LEA.
- 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 LEA; or
- Has inflicted **serious** bodily injury upon another person while at school, on school premises, or at school function under the jurisdiction of a State or LEA.

The IAES shall be determined by the IEP Team.

Definition of *Serious Bodily Injury*

Serious bodily injury means 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))

9.9 Services during 45–Day Placement

A student who is removed from current placement to 45-day placement must:

- Continue to receive services to enable him/her to participate in the general curriculum and to progress toward meeting the goals in the IEP.
- Receive, *as appropriate*, a functional behavioral assessment, behavior intervention services and/or modifications that are designed to address the behavior so that it does not recur.

9.10 Disciplinary Appeal Process

If the parent disagrees with any decision regarding placement or manifestation determination, they may request an expedited hearing. If the LEA believes that

maintaining the current placement could substantially result in injury to the student or others, the LEA may request an expedited hearing.

9.11 Placement during Appeal Process

When an appeal has been requested by either the parent or the LEA, the student shall remain in the interim alternative educational setting (IAES) pending the decision of the administrative law judge (ALJ) until the expiration of the 45-day placement provided, whichever occurs first, unless the State or LEA agree otherwise

9.12 Expedited Hearing

The State or LEA shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.

9.13 Authority of Administrative Law Judge (ALJ)

The ALJ shall hear, and make determination regarding an appeal request. In making the determination, the ALJ may order a change in placement of a student with a disability. In such situations, the ALJ may:

- Return the student to the placement from which the he/she was removed;
- Order a change in placement of the student to an appropriate interim alternative educational setting (IAES) for not more than 45 days, if the current placement of the student is substantially likely to result in injury to self or others.

9.14 Protections for Student Not Yet Eligible for Special Education and Related Services

A student who has not been determined to be eligible for special education and related services and who has engaged in behavior that violates a code of student conduct may assert any of the protections provided under IDEA if the LEA had knowledge that the student had a disability before the behavior that precipitated the disciplinary action occurred.

9.14. A Basis of Knowledge

A LEA shall be deemed to have knowledge that a student is a student with a disability if, before the behavior precipitated the disciplinary action occurred:

- The parent of the student has expressed concern in writing to supervisory or administrative personnel of the appropriate LEA, or a teacher of the student, that the student is in need of special education and related services.
- The parent of the student has requested an evaluation of the student.

- The teacher of the student, or other personnel of the LEA, has expressed specific concerns about a pattern of behavior demonstrated by the student, directly to the director of special education of such agency or to other supervisory personnel of the agency.

9.14.B Exception

An LEA shall not have been deemed to have knowledge that the student is a student with a disability if the parent of the student has not allowed an evaluation of the student or has refused services if the student has been evaluated and it was determined that the student was not deemed a student with a disability.

9.15 Conditions that Apply if No Basis of Knowledge

- If a LEA does not have knowledge that a student is a student with a disability prior to taking disciplinary measures against the student, the student may be subjected to disciplinary measures applied to students without disabilities, who engage in comparable behaviors.
- If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures, the evaluation shall be conducted in an expedited manner. If the student is determined to be a student with a disability, taking into consideration information from the evaluation conducted by the LEA and information provided by the parents, the LEA shall provide special education and related services. Pending the results, the student shall remain in the educational placement determined by school authorities.

APPENDIX A: DISCIPLINARY STEPS

APPENDIX B: ADMINISTRATOR RECOMMENDATION OF EXPULSION

APPENDIX C: STUDENT EXPULSION CHART

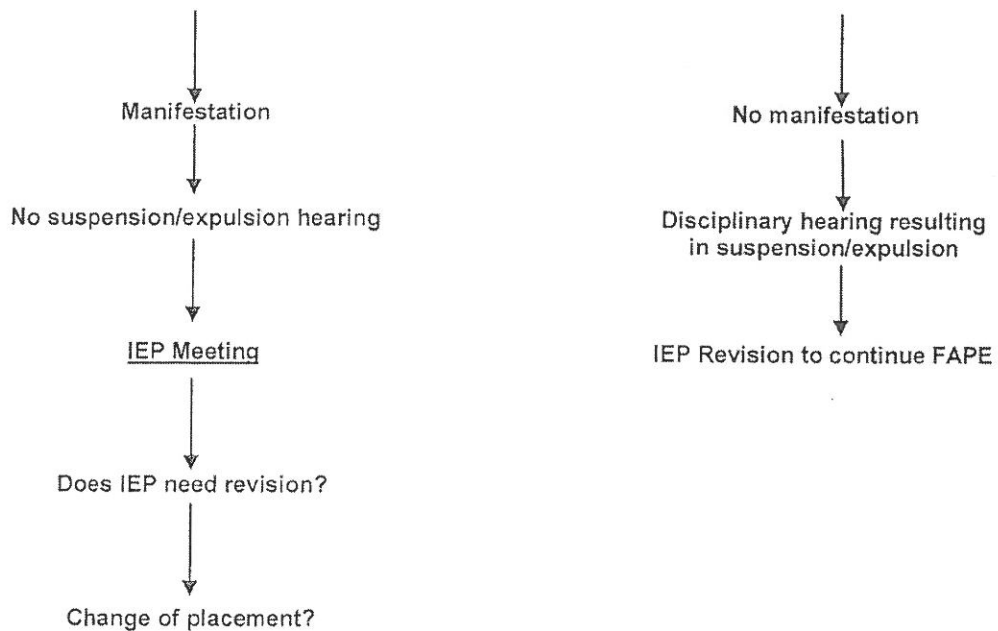
APPENDIX D: SPECIAL EDUCATION DISCIPLINE – DISCIPLINARY REMOVALS

Disciplinary Steps

(More than 10 school days of removal from current placement in a school year when a change of placement occurs)

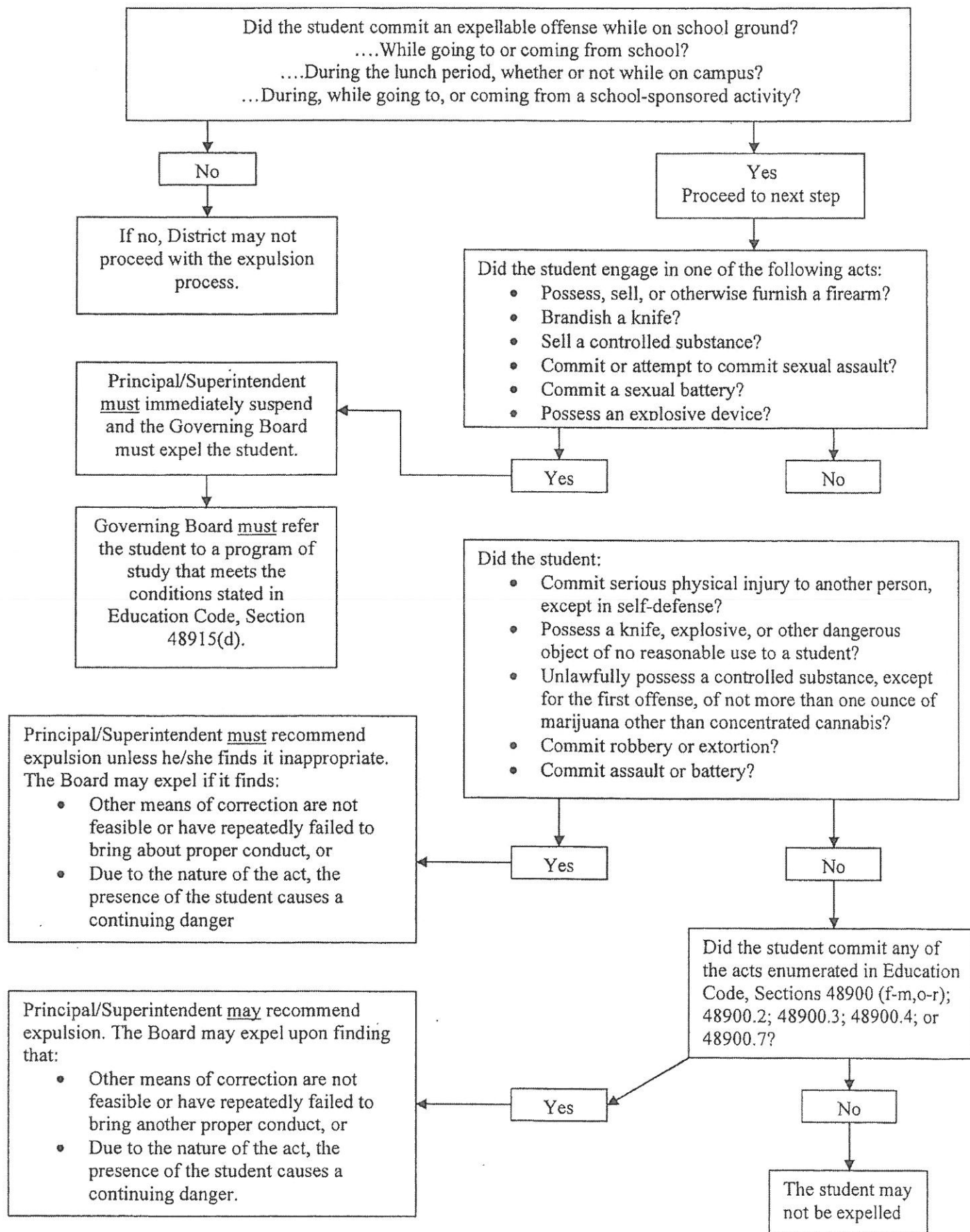
IEP Team Meeting

1. Functional behavioral assessment/review behavior plan
2. Provide parents notice of rights
3. Manifestation issue



Administrator Recommendation of Expulsion		
MUST RECOMMEND EXPULSION (Mandatory Recommendation)	SHALL RECOMMEND UNLESS PARTICULAR CIRCUMSTANCES RENDER INAPPROPRIATE (Quasi-Mandatory Recommendation)	MAY RECOMMEND EXPULSION (Permissive Recommendation)
<p>Education Code 48915(c)</p> <p>Act must meet the 48900(s) requirements.</p> <ol style="list-style-type: none"> Firearm. <ol style="list-style-type: none"> Possessing firearm when a district verified firearm possession and when student did not have prior written permission for firearm possession from a certified employee concurred in by principal or designee. Selling or furnishing a firearm Brandishing a knife* at another person. Unlawfully selling a Controlled substance listed in Health and Safety Code 11053 et seq. Sexual assault or battery (as defined in subdivision (n) of Section 48900). Possession of an explosive** <p>* As used in this section, "knife" means any dirk, dagger, or other weapon with a fixed, sharpened blade fitted primarily for stabbing, a weapon with a blade fitted primarily for stabbing, a weapon with a blade longer than 3-1/2 inches, a folding knife with a blade that locks into place, or a razor with an unguarded blade.</p> <p>** As used in this section, the term "explosive" means "destructive device" as described in Section 921 of Title 18 of the United States Code.</p>	<p>Education Code 48915(a)</p> <p>Act must meet the 48900(s) requirements.</p> <ol style="list-style-type: none"> "Causing serious physical injury to another person, except in self defense." Education Code 48915(a). "Possession of any knife * or other dangerous object of no reasonable use to the pupil." Education Code 48915(a)(2). "Unlawful possession of any controlled substance listed in... Health and Safety Code [section 11053] et seq.] except for the first offense for the possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis." "Robbery or extortion." Assault or battery as defined in Sections 240 and 242 of the Penal Code, upon any a school employee. <p>[Note: Please review 48915(a) which requires that if the administrator does not recommend expulsion for these offenses, that the administrator finds "that expulsion is inappropriate due to the particular circumstance."]</p> <p>Recommendation for expulsion shall be based on one or both of the following:</p> <ol style="list-style-type: none"> "Other means of correction are not feasible or have repeatedly failed to bring about proper conduct" or "Due to the nature of the act, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others" (see EC 48915(b)). 	<p>Education Code 48915(e)</p> <p>Act must be committed while at school, while going to or coming from school, during activity whether on or off campus, or during while going to and from a school activity. Education Code 48900(s).</p> <p>Education Code 48900:</p> <ol style="list-style-type: none"> Physical injury <ol style="list-style-type: none"> caused, threatened or attempted willful force or violence dangerous objects alcohol or other drugs - under the influence sale of look-alike substance represented to be alcohol or other drugs. damage to property theft tobacco obscenity/profanity/vulgarity drug paraphernalia disruption/defiance receipt of stolen property imitation firearm possession aiding and abetting - infliction or attempted infliction of physical injury - (suspension only except as defined) sexual harassment (EC 48900.2) (grades 4-12 only) hate violence (EC 48900.3) (grades 4-12 only) harassment, threats and intimidation (EC 48900.4) (grades 4-12 only) terrorist threats (EC 48900.7) <p>Recommendation for expulsion shall be based on one or both of the following:</p> <ol style="list-style-type: none"> "Other means of correction are not feasible or have repeatedly failed to bring about proper conduct" or "Due to the nature of the act, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others".

Student Expulsion Chart



Special Education Discipline ~ Disciplinary Removals

No Change of Placement		Change of Placement Case by case determination 34 CFR § 300.530 (a)	
Type 1	Type 2	Type 3	Type 4
Ten (10) or fewer cumulative days of suspension 34 CFR § 300.530	Eleven (11) or more cumulative days of suspension 34 CFR § 300.530 (b) (1) Ed Code 48203	Eleven (11) or more cumulative days of suspension = pattern based on substantial similarity of behavior, length of each removal, total amount of time removed, proximity of removals 34 CFR § 300.536	More than ten (10) consecutive days of suspension/expellable offense 34 CFR § 300.530 (c)
NO Manifestation Determination		Manifestation Determination – within 10 school days of decision to change placement by a team including LEA, parent, & relevant members of the IEP team. 1. Was the conduct caused by, or did it have a direct and substantial relationship to the disability. 2. Was the conduct a direct result of the LEA's failure to implement IEP? If yes, the LEA must take steps to remedy deficiency. 34 CFR § 300.530 (e) (3)	
		Manifestation 1. Conduct an FBA and develop BIP/BSP ~OR~ 2. Review and modify as necessary, preexisting BIP/BSP 34 CFR § 300.530 (f)	Not a Manifestation Apply same discipline as to students without disabilities, except for educational services below. 34 CFR § 300.530 (c)
		Placement a. Prior placement unless parent/LEA agree to modify placement as part of BIP/BSP b. 45 Day IAES Special Circumstances *Weapons, Drugs, or Serious Bodily Injury Hearing Officer *Substantial likelihood of injury to student or others c. Honig Injunction Available in court based on Dangerousness 34 CFR § 300.530 (f) (2) + (g) 300.532 (a) + (b)	Placement Expulsion
Educational Services No services unless general education students receive services. 34 CFR § 300.530 (d) (3)	Educational Services 1. Enable student to continue to participate in the general curriculum. 2. Enable student to progress towards meeting IEP goals. 34 CFR § 300.530 (d) (4)	Educational Services 1. Enable student to continue to participate in the general curriculum. 2. Enable student to progress towards meeting IEP goals. 3. FBA & BIP as appropriate designed to address behavior so it does not recur. Where: May be in an IAES Decided by: IEP team 34 CFR § 300.530 (d) (1) + (5)	Educational Services 1. Enable student to continue to participate in the general curriculum. 2. Enable student to progress towards meeting IEP goals. 3. FBA & BIP as appropriate designed to address behavior so it does not recur. Where: May be provided in an IAES Decided by: IEP team 34 CFR § 300.530 (d) (1) + (5)

NOTE: School districts and private schools are required to notify the County Superintendent of Schools of any severance of attendance beyond 10 school days or denial of admission of any child who is an individual with exceptional needs. (E.C. §48203). Students with a Section 504 accommodation plan are afforded procedural safeguards similar to students enrolled in special education.



Fagen Friedman & Fulfroft LLP

Suspension, Expulsion, and Involuntary Transfer

According to Education Code sections 48900 et.seq., a pupil who commits any offense related to school activities or attendance involving the following acts or offenses may be removed from his or her school setting through suspension, expulsion, or involuntary transfer to a continuation school, opportunity program, or county community school:

- Physical injury of another person
- Tobacco use
- Extortion (or attempts)
- Obscene acts, profanity
- Hate-motivated behavior
- Drug or alcohol offense
- Weapons possession
- Disruption/defiance
- Sexual harassment
- Theft
- Robbery (or attempts)
- Receipt of stolen property
- Gang behavior
- Terroristic threats
- Harassment, threats, or intimidation
- Bullying

<i>Suspension</i>	<i>Expulsion</i>	<i>Involuntary Transfer</i>
<p>Definition</p> <p>Short-term removal of a pupil from ongoing instruction at a school for adjustment purposes (may be used only when other means fail to bring about proper conduct, except for specified offenses or safety concerns). Does not include reassignment to classes at the same school for the student's normal schedule, referral to an advisor, or removal from a class during the period (Education Code 48900, 48900.5, 48910, 48915, 48925).</p>	<p>Long term removal of a pupil from the school district by action of the governing board, which may suspend the expulsion with specified conditions (Education Code 48918, 48915, 48925).</p> <p>For special education students, there must be a pre-expulsion IEP (<i>Honig v. Doe</i>, 484 U.S. 305 [1988]; Education Code 48915.5)</p>	<p>Transfer of irregularly attending, truant, or disruptive pupil to a continuation school or opportunity program or class (Education Code 48432.5, 48637).</p>
<p>Who must act</p> <p>Principals or superintendents (or their designees), teachers (Education Code 48900, 48910, 48911 [g] [i]).</p>	<p>Principal or superintendent (or designee) must recommend expulsion if pupil causes physical injury; possesses a knife, or other dangerous object, unlawful possession of any controlled substance; robbery or extortion, assault or battery upon a school employee. Must report reasons in writing if expulsion is considered inappropriate Education Code 48915(a)(1-5).</p> <p>Board makes final decision to expel or suspend expulsion (Education Code 48915).</p>	<p>Principal (or designee), for transfer to continuation school; district or county screening committee, for transfer to opportunity program or class or county community school (Education Code 1980, 48432.5, 48637.1, 48637.2).</p>

<i>Suspension</i>	<i>Expulsion</i>	<i>Involuntary Transfer</i>
<p>How long</p> <p><u>Principals or superintendents (or their designees)</u>: 5 days per offense; may be up to 20 days per year; balance of semester for continuation pupil, with board's approval (Education Code 48903, 48912.5). <u>Teacher</u>: remainder of day and the next day from teacher's class (Education Code 48910). May request parent/guardian to attend class with student (Education Code 48900.1).</p>	<p>Until governing board permits readmission (Education Code 48915.1, 48916).</p> <p>For students with disabilities, please see section 8.</p>	<p>Until end of the semester following the semester during which the acts leading to the transfer occurred or as specified under required placement review (Education Code 48432.5).</p>
<p>Due-process steps</p> <ol style="list-style-type: none"> 1. Conduct informal conference with pupil, referring school employee, and principal (or designee) or superintendent (Education Code 48911). 2. Tell pupil reasons for discipline and allow pupil an opportunity to present his/her side (Education Code 48911). 3. Contact parent/guardian by telephone and in writing (Education Code 48911). 4. Report suspension to the governing board and superintendent (Education Code 48911). 5. Request conference with parent/guardian and school (Education Code 48911). 	<ol style="list-style-type: none"> 1. Hearing within 30 school days of act unless governing board meets less than weekly, in which case 40 school days are allowed (Education Code 48918). 2. Give pupil written notice, facts and charges, and copy of specific rule violation; advise of right to be present, have counsel, copy documents, confront and question witnesses, present evidence, and obtain a record of the hearing. 3. Board determines whether pupil is expelled subsequent to board hearing or recommendation from panel or hearing officer (Education Code 48918). 4. Expulsion decision must be based on substantial evidence relevant to the charges adduced at the hearing (Education Code 48918). 5. Deliberation is held in closed session, but decision to expel is made public (Education Code 48918). 6. Pupil must be advised that he or she may appeal to the county board of education. Due-process rules on appeal are extremely technical. County board's decision is final (Education Code 48918-48924). 	<ol style="list-style-type: none"> 1. Pupil and parent are notified of proposed involuntary transfer in writing. Parent/guardian/pupil may request appeal with superintendent (or designee) (Education Code 48432.5, 48637). 2. At meeting, pupil and parent are informed of facts and reasons for transfer, they may inspect documents, question witnesses, and present their own evidence (Education Code 48432.5, 48637). 3. Written decision must give reasons for transfer (based on Education Code 48900, truancy, or irregular attendance) and notice of any review process (Education Code 48432.5, 48637). 4. County community school requires decision by school attendance review board (Education Code 1981.2[b], 48432.5).