

SPECIAL EDUCATION RIGHTS AND RESPONSIBILITIES

Chapter 8

Information on Discipline of Students with Disabilities

TABLE OF CONTENTS

Question	Page
1. For what reasons can a school district suspend or expel any student?.....	1
2. Under what circumstances could my child with a disability be suspended or expelled from school?	4
3. What is a "manifestation determination" meeting?	6
4. How do I prepare for the manifestation determination meeting?.....	6
5. If I disagree with the recommendation of the manifestation determination IEP team to expel my child, can I challenge the recommendation?.....	7
6. Are there any circumstances under which a school can change my child's placement immediately?	8
7. The district moved my child into a new classroom for disciplinary reasons, but told me that stay-put would not apply, even if I file for due process, because the change was not really a "change of placement"?	9
8. Must the district continue to provide special education services to my child if he is suspended for more than ten days or if he is expelled?.....	10

Information on Discipline of Students with Disabilities

9. I believe my child has a disability which caused his misbehavior, but the school district has never evaluated him for special education. Do the rules regarding the discipline of special education students apply to him?10
10. What if I requested a special education evaluation for my child but I did not do it in writing?11
11. My child, who is being expelled, has not been made eligible for special education, but since the incident occurred I have requested an evaluation. What will happen with my child’s placement while we are waiting for the results of that evaluation?11
12. Does the teacher or other staff member’s expression of concern about behavior need to be in writing?.....12
13. Can my child be expelled from just the transportation portion of his school program?12
14. Are there any special rules governing the discipline of students identified as “disabled” under Section 504 of the Rehabilitation Act of 1973?12
15. What happens if I disagree with the determination?14
16. What are the rights of my child to return to school in the district that expelled him? 14
17. If my child is expelled, what are the rules governing admission of my child to a new school district?.....15
18. My child has behavior problems that may put him at risk of suspension and/or expulsion. Are there any special services or protections for him?17
19. Do the positive behavior intervention regulations specifically prohibit some behavior programming or techniques?18
20. What can I do if teachers or other school staff physically or emotionally abuse my child?.....19

Information on Discipline of Students with Disabilities

21. Do the positive behavior intervention regulations have any impact on the discipline of special education students?19
22. If, after the manifestation determination (or 504) meeting, the team recommends a student for expulsion — and you choose not to challenge the recommendation through due process — what are the procedures for the expulsion hearing and for any appeals?.....20
23. The district proposes to remove my child from school because of his behavior problems and is recommending home instruction as his placement. Can the district do this?21

SPECIAL EDUCATION RIGHTS AND RESPONSIBILITIES

Chapter 8

Information on Discipline of Students with Disabilities

1. For what reasons can a school district suspend or expel any student?

The grounds for suspension or a recommendation of expulsion are the same for children with and without disabilities. The permissible grounds for taking disciplinary action under California Education Code section 48900 are:

- (1) Causing or threatening physical injury to another;
- (2) Willfully using force or violence against someone, except in self-defense;
- (3) Possessing a knife, gun, or other dangerous object without school authorities' permission, or furnishing such an object;
- (4) Unlawfully possessing, using, or furnishing a controlled substance or alcoholic beverage, or being under the influence of such a substance or beverage;
- (5) Offering or furnishing a substance misrepresented to be a controlled substance or alcoholic beverage;
- (6) Committing or attempting to commit robbery or extortion;
- (7) Damaging or attempting to damage school or private property;
- (8) Stealing or attempting to steal school or private property;
- (9) Possessing or using tobacco in an unauthorized manner;

Information on Discipline of Students with Disabilities

- (10) Committing an obscene act or engaging in habitual profanity or vulgarity;
- (11) Dealing in drug paraphernalia;
- (12) Disrupting school activities or otherwise willfully defying school authorities;
- (13) Knowingly receiving stolen school or private property;
- (14) Possession of an imitation firearm that appears to be real;
- (15) Commission or attempt to commit a sexual assault, commission of a sexual battery;
- (16) Harassment, threat, or intimidation of a student who is a witness in a school disciplinary proceeding;
- (17) Engaging in bullying, whether in person or electronically (for example, by e-mail);
- (18) Engaging in hazing, or attempted hazing. (Hazing includes rituals that can cause serious bodily harm or personal degradation or disgrace);
- (19) Engaging in sexual harassment which a reasonable person of the same gender as the victim would consider sufficiently severe or pervasive as to have a negative impact on such a victim's academic performance or to create an intimidating, hostile, or offensive Educational environment; [Cal. Ed. Code Sec. 48900.2];
- (20) Causing, attempting to cause, threatening to cause, or participating in acts of hate violence, which is defined as injuring or interfering with a person's exercise of any constitutional or other legal rights because of the person's or a perception of the person's, race, color, religion, ancestry, national origin, disability, gender, or sexual orientation; [Cal. Ed. Code Sec. 48900.3, Cal. Penal Code Secs. 422.6 & 422.55];
- (21) Intentionally engaging in harassment, threats, or intimidation, directed against a student or group of students that is sufficiently severe to disrupt classwork, create substantial disorder, and invade the rights of the student or group by creating an intimidating or hostile educational environment; [Cal. Ed. Code Sec. 48900.4]; and
- (22) Making terrorist threats against school officials or school property. This includes any oral or written statement threatening to commit a crime

Information on Discipline of Students with Disabilities

which will result in death, great bodily injury, or property damage in excess of \$1000. [Cal. Ed. Code Secs. 48900 & 48900.1.]

- (23) Suspension or expulsion for any of these acts must be related to school activity or attendance. This includes misconduct which occurs on school grounds, while going to or coming from school, during lunch (whether on or off campus), during a school sponsored activity, or while going to or coming from a school sponsored activity. [Cal. Ed. Code Sec. 48900(s).]

School districts should use alternatives to suspension or expulsion to address problems of truancy, tardiness, and other absences from school activities. [Cal. Ed. Code Sec. 48900(w).]

It is within the superintendent's discretion to use alternative methods, such as anger-management classes, instead of suspension or expulsion. [Cal. Ed. Code Sec. 48900(v).] Suspension is appropriate only after other means of correction fail to bring about proper conduct. A student may be suspended on a first offense only for reasons (1) through (5) above, or because his presence causes a danger to persons or property, or threatens to disrupt the Educational process. [Cal. Ed. Code Sec. 48900.5.]

Expulsion is appropriate only if the student:

Committed the offenses listed in (1) through (6) above **or**

Committed the offenses listed in (7) through (13) above **and either:**

- (1) Other means of correction are not feasible or have failed repeatedly; or
- (2) The student's presence causes a continuing danger to the physical safety of the student or others.

[Cal. Ed. Code Sec. 48915.]

The California Education Code at section 48915(a) requires that a principal or superintendent recommend expulsion if the student commits any of the following acts (unless he finds that expulsion is inappropriate due to the particular circumstance):

- (1) Causing serious physical injury to another, except in self-defense;

Information on Discipline of Students with Disabilities

- (2) Possession of any knife, explosive, or other dangerous object of no reasonable use;
- (3) Unlawful possession of a controlled substance;
- (4) Robbery or extortion; or
- (5) Assault or battery upon any school employee

The California Education Code at sections 48915(c) and (d) requires that a principal or superintendent must immediately suspend, and a school board must expel a student if any of the following acts have been committed:

- (1) Possessing, selling or furnishing a firearm;
- (2) Brandishing a knife at another person;
- (3) Selling a controlled substance;
- (4) Committing or attempting a sexual assault or committing a sexual battery; or
- (5) Possessing an explosive.

However, this mandatory expulsion provision is not enforceable against a special education student unless the student has been afforded all of the procedural and substantive safeguards set forth in this chapter and, after application of those safeguards, has been found eligible for expulsion.

2. Under what circumstances could my child with a disability be suspended or expelled from school?

Students with disabilities are subject to the same suspension rules as nondisabled students, except that suspensions of students with disabilities cannot exceed 10 consecutive days (that is, 10 days in a row) without a “manifestation determination.” A teacher may suspend a student for up to two days. [Cal. Ed. Code Sec. 48910.] A principal may suspend a student for up to five days. [Cal. Ed. Code Sec. 48911.] State law defers to federal law for most of the rules governing suspension and expulsion of special Education students. [Cal. Ed. Code Sec. 48915.5.] Federal and state law allow for up to 10 consecutive days of

Information on Discipline of Students with Disabilities

suspension of special education students without any requirement of a manifestation determination, but for suspensions in excess of 10 days, there must be a special meeting. [20 U.S.C. Sec. 1415(k)(1)(B).] Principals, therefore, sometimes extend students' five-day suspensions by an additional five days. Students with disabilities may be suspended for any one of the misbehaviors on the above list that applies to all students, even if the misbehavior is a manifestation of the child's disability.

Typically, with suspensions, there is a pre-suspension conference involving the principal and teacher and the student. At that conference, the student is told why he is being suspended and what the evidence is against him, and he is given an opportunity to present his version of the event and any evidence in his favor. The law does not require the school to wait for the parent to arrive to hold this pre-suspension conference. [Cal. Ed. Code Sec. 48911(b).] However, the school is required to make reasonable efforts to contact the parent by phone at the time of the suspension. [Cal. Ed. Code Sec. 48911(d).] A student can be suspended without a pre-suspension conference if the principal determines that an emergency situation exists. An emergency situation is where there is a “clear and present danger” to the life, safety or health of students or school staff. [Cal. Ed. Code Sec. 48911(c).] If no pre-suspension conference is held, because it is an emergency situation, a conference must be held within two school days. Both the parent and student must be notified of this conference and the student must be allowed to return to the campus to attend. [Cal. Ed. Code Sec. 48911(c).]

You must also be informed in writing of a suspension. [Cal. Ed. Code Sec. 48911(d).] The written notice should specify the section or sections of the Education Code which the district says your child violated. You are required to respond without delay to any request from school officials to attend a conference regarding your child's behavior. [Cal. Ed. Code Sec. 48911(f).]

Your child cannot be suspended for more than 10 consecutive school days or expelled from school for misconduct that is a manifestation of their disability [20 U.S.C. Sec. 1415(k)(1)(C).] Suspensions for more than 10 consecutive school days and expulsions are considered "changes of placement," and schools cannot

change your child's placement without your consent, or without a manifestation determination meeting, except for certain behaviors discussed below.

3. What is a "manifestation determination" meeting?

The manifestation determination meeting is a meeting of the relevant members of the IEP team to determine whether a student with a disability may be expelled or have his placement changed for more than 10 consecutive school days for misconduct. It is supposed to be held within 10 days of the school's decision to expel the student or change his placement. At the meeting, the IEP team reviews the relevant information from the student's file, including the IEP and any information from teachers and the parents and then decides two things: (1) was the behavior caused by, or did it have "a direct and substantial relationship" to, the student's disability; and (2) was the behavior the direct result of the district's failure to implement the IEP? [34 C.F.R. Sec. 300.530(e).]

If the IEP team answers "YES" to either question, the student cannot be expelled and any placement change requires either the consent of the parent or a hearing officer's order. If the IEP team determines that the behavior is a manifestation of the student's disability, then, unless the behavior is one of the serious offenses discussed below, the student must go back to his original placement--unless the parent and school agree otherwise. The school must also do a behavioral assessment for the student or modify the student's existing behavior plan to address the behavior. [20 U.S.C. Sec. 1415(k)(1)(F); 34 C.F.R. Sec. 300.530(f).] If the team answers "NO" to both questions, the student can be referred for expulsion.

4. How do I prepare for the manifestation determination meeting?

You should prepare to discuss each of the items that must be considered before the district can assert that your child's disability was not the cause of his misconduct. The manifestation determination IEP team must agree that your child's behavior was not directly related to his disability and that the IEP was implemented before

a district can change a special education student's placement. Therefore, you may wish to consider obtaining an independent psychological or counseling professional's opinion as to the two questions that the team must answer. You should bring that professional (or their report) to the meeting.

You should consider whether all of the components of the IEP were implemented. Were the services written into the IEP actually being provided at the time of the behavior in question? If a behavior support or intervention plan was in place, was it being implemented as required by the IEP at the time of the behavior? If the IEP included a behavior plan or goals that addressed significant behaviors, it is more likely that the manifestation determination team will find that the behaviors were related to your child's disability.

You should also consider whether the district addressed *all* of your child's behavioral needs. Were behavioral problems evident before the misconduct that led to the manifestation determination meeting? If so, was a behavioral assessment ever done? Was a behavior plan in place? Did the IEP specify a certain class size or type; a kind of classroom environment; or particular curriculum or other modifications? If so, were those IEP components being provided at the time of the misconduct in question? If ongoing behavioral issues were not addressed by staff appropriately, you may be able to convince the district that the student should not be referred for expulsion.

5. If I disagree with the recommendation of the manifestation determination IEP team to expel my child, can I challenge the recommendation?

Yes. If you disagree with the team recommendation, you can file for due process to dispute the recommendation of the manifestation determination team. [20 U.S.C. Sec. 1415(k)(3); 34 C.F.R. Secs. 300.530 - 300.532.] In most cases, until the due process proceedings have been completed, your child must remain in his current classroom placement and continue to receive the special education services required in his IEP. See Chapter 6, *Information on Due Process/Compliance Complaints*.

6. Are there any circumstances under which a school can change my child's placement immediately?

Yes. Under certain circumstances, a district can immediately place your child in a different placement, and keep him there for up to 45 school days, even if the behavior is found to be a manifestation of his disability.

Your child may be placed in an “interim alternative educational setting” if the district claims he has done any of the following:

- (1) Carried or possessed a weapon to or at school or on school grounds or at a school function;
- (2) Knowingly possessed or used illegal drugs, or sold or solicited the sale of such a drug while at school, on school grounds, or at a school function;
- (3) Inflicted serious bodily injury upon another person while at school, on school grounds, or at a school function. "Serious bodily injury" means: substantial risk of death, or extreme physical pain, or protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty. [20 U.S.C. Secs. 1415(k)(1)(G) & (7)(d)); 34 C.F.R. Sec. 300.530(g).] The district must still meet with you within 10 days to have a manifestation determination meeting.

If you file for due process to challenge the placement of your child in an interim setting, or the rest of the IEP team's decision regarding whether the behavior was a manifestation of disability, a hearing officer will decide—in an **expedited hearing**— whether to return your child to his original placement or leave him in (or order him into) a 45-day alternative placement. [20 U.S.C. Sec. 1415(k)(3)(B); 34 C.F.R. Sec. 300.532(b).] During the challenge to either the interim setting or the district's determination that the behavior was not a manifestation of your child's disability, your child will stay in whatever setting the district has placed him. [20 U.S.C. Sec. 1415(k)(4)(A).] The hearing must be held within 20 school days from the date of your request and the hearing officer must issue a decision within 10 school days after that. There must also be a “resolution session” or mediation held

within seven days of the request. [20 U.S.C. Sec. 1415(k)(4)(B); 34 C.F.R. Sec. 300.532(c).] See Chapter 6, *Information Due Process/Compliance Complaints*.

The district can also go to state or federal court to seek a judge's order prohibiting your child from returning to his current placement pending the manifestation determination and related proceedings, on the ground that this would be substantially likely to result in injury to your child or someone else. While the manifestation determination and due process proceedings are pending, your child's educational placement and services will depend on the terms of the judge's order. [*Honig v. Doe*, 484 U.S. 305 (1988); *Gadsden City Bd. of Ed. v. B.P.*, 3 F. Supp. 2d 1299 (N.D. Ala. 1998).] During a long-term suspension (or expulsion), a student is still entitled to a free appropriate public education which enables the student 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. Sec. 300.101(a).]

7. The district moved my child into a new classroom for disciplinary reasons, but told me that stay-put would not apply, even if I file for due process, because the change was not really a “change of placement”?

As stated above, the district can immediately place your child in an interim alternative educational setting (for conduct involving weapons, illegal drugs or inflicting serious bodily injury) and keep him there for up to 45 school days, even if the behavior is found to be a manifestation of his disability. There is no stay-put requirement under such circumstances. **However, if your child was recommended for expulsion for any other behavior, the stay-put requirements should be followed.**

Also, a district may try to make a “disciplinary transfer” of your child to a new school. This may be done to avoid a stay-put (arguing that a change of school is not a change of placement, if the same IEP is offered at the new site) or because your child has behavior problems at school. Except as described above, changing your child's placement — including a “disciplinary transfer” — is a decision that must be made by the IEP team, where due process procedures may be used.

8. Must the district continue to provide special education services to my child if he is suspended for more than ten days or if he is expelled?

Yes. Unlike general education students, students with disabilities must continue to receive a free appropriate public education (FAPE) during any period of suspension beyond 10 days, during any period of interim placement and during any period of expulsion. [20 U.S.C. Secs. 1412(a)(1) & 1415(k)(1)(D); 34 C.F.R. Sec. 300.530(d).] The services your child receives under these circumstances must enable him to continue to participate in the general curriculum and to continue to progress toward meeting his IEP goals and to receive needed behavioral assessments and services. [20 U.S.C. Sec. 1415(k)(1)(D); 34 C.F.R. Secs. 300.530(d)(1)(i) & (ii).]

9. I believe my child has a disability which caused his misbehavior, but the school district has never evaluated him for special education. Do the rules regarding the discipline of special education students apply to him?

The rules apply if the district “has knowledge” that your child has a disability. There are three situations in which a district will be “deemed” to have this knowledge (if your child is not already identified as a special education student) and in which case he will be protected by the special education disciplinary rules. These include: (1) When a parent had expressed concern in writing — *before the student's misbehavior* — to a school administrator or the student's teacher that he needs special education; (2) When a parent had requested — *before the misbehavior* — that the student be evaluated for special education and the district did not do so; and (3) When a teacher or other school personnel — before the misbehavior — had expressed specific concerns about a pattern of behavior directly to the special education director, or other supervisory personnel. [20 U.S.C. Sec. 1415(k)(5); 34 C.F.R. Sec. 300.534(b).]

The regulation lists three situations in which the district will not be deemed to have knowledge, and in which a student is not protected under the special education discipline rules: (1) When the district has already assessed a student and determined he is not eligible for special education; (2) When the parent has not allowed an evaluation; or (3) The parent has refused special education services. [34 C.F.R. Sec. 300.534(c).]

10. What if I requested a special education evaluation for my child but I did not do it in writing?

State law requires that a special education evaluation go forward even if the request is made *orally* by the parent. District staff receiving such a request must assist the parent in putting the request in writing. [Title 5 California Code of Regulations (C.C.R.) Sec. 3021(a).] An oral request for evaluation, even if it was not acted on by the district, should be enough to show the district had sufficient knowledge of a suspected disability for purposes of holding an IEP team meeting to make a manifestation determination. [34 C.F.R. Sec. 300.534.]

Even if you have made an oral request for evaluation, you should also put your request in writing and send it to the school district. In your letter, you need to specifically request an evaluation for special education services and tell the district why you think your child has a qualifying disability. It is not enough just to express your concerns. [*Student v. Sonoma Valley Unified Sch. Dist.*, SN 1116-99.] (available at http://www3.scoe.net/speced/seho/seho_search/sehoSearchDetails.cfm?ID=1165).

11. My child, who is being expelled, has not been made eligible for special education, but since the incident occurred I have requested an evaluation. What will happen with my child's placement while we are waiting for the results of that evaluation?

When you have requested an evaluation for special education eligibility after the behavioral incident that led to the expulsion recommendation, the evaluation must

be done more quickly. However, until the results of the evaluation are available, your child will remain in the educational placement determined by school officials. This means that your child can be expelled before the expedited assessment process is completed. [20 U.S.C. Sec. 1415(k)(5)(D); 34 C.F.R. Sec. 300.534(d)(2).]

12. Does the teacher or other staff member’s expression of concern about behavior need to be in writing?

No. A teacher or other staff must express specific concerns about your child’s pattern of behavior directly to the special education director or other supervisory staff. However, these concerns do not need to be expressed in writing. [34 C.F.R. Sec. 300.534(b)(3).]

13. Can my child be expelled from just the transportation portion of his school program?

Yes. However, if your child is excluded from school bus transportation, and transportation is a part of his IEP, he is still entitled to an alternative form of transportation at no cost to you. [Cal. Ed. Code Sec. 48915.5(c).] An IEP meeting must be held before excluding your child from the bus, as this is a change in IEP service.

14. Are there any special rules governing the discipline of students identified as “disabled” under Section 504 of the Rehabilitation Act of 1973?

Section 504 requires that schools evaluate a student believed to have a disability before making an initial placement of the student and before any subsequent, significant change in placement of the student. [34 C.F.R. Sec. 104.35(a).] According to OCR, the exclusion of a student for more than 10 consecutive days, the exclusion for an indefinite period, and the permanent exclusion of a student

Information on Discipline of Students with Disabilities

(expulsion) can constitute significant changes of placement under Section 504. A series of suspensions — each of which is 10 or fewer days in duration, but that creates a “pattern of exclusions” — may also be a significant change in placement. Office of Civil Rights, Letter re: Akron City School Dist., 19 IDELR 542 (Nov. 18, 1992) (*cited in Parents of Student W. v. Puyallup Sch. Dist., No. 3*, 31 F.3d 1489, 1495 (9th Cir. 1994) (citing OCR Letter.)

Before changing a Section 504 student’s placement, the district must conduct a re-evaluation of the student to determine whether the misconduct in question is caused by the student’s disability and, if so, whether the student’s current educational placement is appropriate. [34 C.F.R. Sec. 104.35(a).]

As a first step in the re-evaluation, the district must determine whether the misconduct is caused by the student’s disability. This determination may be made by the same group of persons who make initial placement decisions for Section 504 students. Recent psychological evaluation information related to the behavior should be made available to the group. The determination should not be made by those responsible for the district’s regular disciplinary procedures, such as administrators, who lack expertise and personal knowledge about the student. These individuals, however, may participate as members of the placement decision group.

If it is determined that the misconduct of a Section 504 student is caused by the disability, the evaluation team must continue the evaluation to determine whether the student’s current educational placement is appropriate. Even when the behavior is caused by the disability and the appropriateness of the current educational placement is reviewed, that review, presumably, could find that the placement is not appropriate and could lead to a permanent change in placement and/or services.

If it is determined that the misconduct is *not* caused by the student’s disability, the students may be excluded from school in the same manner as students without disabilities. In such a situation, Section 504 and the ADA would permit all educational services to a solely Section 504 student to cease. (The 504 expulsion

standards are different from those applied to special education students).
Waterford Bd. of Educ. 21 IDELR 818 (OCR 1994).

15. What happens if I disagree with the determination?

If you disagree with the determination that the behavior is not related to the student's disability — or with the placement proposal in those cases where the behavior is determined to be caused by the disability — you may request a Section 504 hearing. The school district obtains a hearing officer to hear and decide the case. Unlike special education disciplinary procedures, each school district establishes its own Section 504 hearing procedures. Employees and board members of your district may not serve as hearing officers. If another district shares a contract with your district to provide services to students with disabilities, its employees are also prohibited from serving as hearing officers. [18 IDELR 230 (1991).] **Another important distinction between special education discipline procedures and Section 504 procedures is that “stay put” does not apply to Section 504 students.** Therefore, a Section 504 student's placement could be changed or he could be expelled while the Section 504 hearing is still pending.

The due process procedures discussed above do not apply when disciplinary actions are due to the *current* use of illegal drugs or alcohol by students with disabilities. [See: Discipline of Students with Disabilities in Elementary and Secondary Schools, U.S. Dept. of Ed., Office for Civil Rights, October, 1996, revised 2/25/98.]

16. What are the rights of my child to return to school in the district that expelled him?

The district board of education must adopt local rules and regulations that establish a procedure for processing requests for readmitting expelled students. However, readmission is not automatic, but is discretionary with the school district. [Cal. Ed. Code Sec. 48916.] The board, after voting to expel your child, may suspend

enforcement of the expulsion for a period up to one year. During this period, he is “on probation.”

Probation may be revoked, and the expulsion enforced, if your child commits any act for which he could have been suspended or expelled or for any violation of the district’s student conduct code. After one year of successful probation, he must be reinstated. The district may, but is not required to, expunge your child’s records of all information related to the suspended expulsion. [Cal. Ed. Code Sec. 48917.]

The order expelling your child must specify the date when he may apply for readmission. That date cannot be later than the last day of the semester following the semester in which the expulsion occurred, but can be *earlier*. The order can include a plan of rehabilitation that your child must follow during the period of expulsion. It may also include an assessment at the time of application for readmission. The plan may also include recommendations for counseling, employment, community service or other rehabilitative programs. [Cal. Ed. Code Sec. 48916.] If any of the reasons for expulsion related to controlled substances, the district may require, as a condition of readmission and with your consent, that your child enroll in a county-supported drug rehabilitation program. [Cal. Ed. Code Sec. 48916.5.]

17. If my child is expelled, what are the rules governing admission of my child to a new school district?

Your child may be admitted to school in another district only if:

- (1) He establishes legal residence in the jurisdiction of the new district; or
- (2) His current district grants him an inter-district transfer.

[Cal. Ed. Code Secs. 46600(b) (transfer for expelled students), 46601 (appeals) & 46603 (provisional admission).]

The new district may request information and/or a recommendation from the former district and will then hold a hearing to determine whether your child poses a continuing danger to the students or employees of the new district. [Cal. Ed.

Information on Discipline of Students with Disabilities

Code Secs. 48915.1(a)-(b).] The hearing is conducted under the same rules and procedures as regular expulsion hearings. [Cal. Ed. Code Sec. 48918.] If, after the hearing, the district determines that your child *does* pose a continuing danger, it may condition enrollment on attendance in a specified program or may *deny* the request for admission. [Cal. Ed. Code Secs. 48915.1(c)-(d).] If the district determines that your child does not pose a continuing danger, it must admit him to one of its schools for the remainder of the expulsion period, provided he has established residence in the new district or has obtained an inter-district transfer. [Cal. Ed. Code Sec. 48915.1(e).] If you have not informed the new district of the expulsion from the former district and the new district finds out, the fact of nondisclosure must be recorded and may be discussed at the readmission hearing described above.

However, if your child was expelled for any of the following reasons, he cannot enroll in any other California district during the period of his expulsion — unless it is a county *community school or juvenile court school*:

- (1) Causing serious physical injury to another person (except in self-defense);
- (2) Possessing a knife, explosive or other dangerous object of no reasonable use to him at school or at a school activity off campus;
- (3) Possession of a controlled substance;
- (4) Engaging in robbery or extortion,
- (5) Assault or battery;
- (6) Possession or sale of a firearm;
- (7) Brandishing a knife;
- (8) Sale of a controlled substance; or
- (9) Sexual assault

[Cal Ed. Code Secs. 48915.1, 48915(a) & (c), 48915.2(a).] After the period of expulsion (for any of the above reasons) is over, your child may be admitted to the new district if he meets the residence or inter-district transfer requirements. The

admission would only be considered if, after a hearing, the new district determines that he does not pose a continuing danger.

18. My child has behavior problems that may put him at risk of suspension and/or expulsion. Are there any special services or protections for him?

If your child is enrolled in special education and exhibits a serious behavior problem, the district must provide a “functional analysis assessment” by a behavior intervention case manager (who has training and experience in positive behavior intervention) and create a “behavior intervention plan.” The case manager must develop a positive behavior intervention plan which:

- (1) Identifies the function of the negative behavior for your child; and
- (2) Teaches him positive replacement behaviors that accomplish the same objectives but in a socially appropriate way.

[5 C.C.R. Sec. 3001(g).]

A “serious behavior problem” is a behavior problem which:

- (1) Is self-injurious or assaultive;
- (2) Causes serious property damage; or
- (3) Is severe, pervasive, and maladaptive and for which instructional/behavioral approaches specified in the student’s IEP are found to be ineffective.

[5 C.C.R. Sec. 3001(a-b).]

When agreed on by the IEP team, the behavior plan becomes part of your child’s IEP. It must contain goals and objectives specific to the targeted behaviors, and it must describe the services to be provided in order to achieve those goals and objectives. [5 C.C.R. Sec. 3001(g).] The behavior interventions selected by the specialist must be “positive.” That is, they must respect your child’s dignity and privacy, assure him physical freedom, social interaction, and individual choice, help him learn to interact effectively socially, assure him access to education in the

least restrictive environment, and result in lasting positive change. [5 C.C.R. Sec. 3001(e).]

Positive behavior interventions shall be used only to replace specified *negative* behaviors with acceptable behaviors and shall never be used solely to eliminate “maladaptive” behaviors. [5 C.C.R. Sec. 3052(a)(2).] In other words, the district should not use techniques that exclusively try to eliminate, or control, unwanted behavior. Instead, it must try to teach *appropriate* behavior at the same time.

19. Do the positive behavior intervention regulations specifically prohibit some behavior programming or techniques?

The behavior interventions used by the district cannot involve the infliction of pain or trauma. [5 C.C.R. Secs. 3001(d) & 3052(l)(1).] In a behavioral emergency, that is, the demonstration of a behavior that has not been previously observed and addressed or for which no previous intervention has been effective, properly trained school personnel may use prone containment. The regulations contain very specific guidelines on the handling and documentation of emergencies. However, even in emergencies (and in all other behavior services) behavior interventions may not include:

- (1) Release of toxic or unpleasant sprays near the student’s face;
- (2) Denying adequate sleep, food, water, shelter, bedding, comfort, or access to bathroom facilities;
- (3) Subject the student to verbal abuse, ridicule or humiliation or cause emotional trauma;
- (4) Use locked seclusion;
- (5) Impede adequate supervision of the student;
- (6) Deprive the student of one or more of his senses; or
- (7) Employ any device, material, or object that simultaneously immobilizes all four extremities (except for prone containment in emergencies).

[5 C.C.R. Secs. 3052(i) & (l).]

20. What can I do if teachers or other school staff physically or emotionally abuse my child?

Whether it is in the context of “discipline” or otherwise, a complaint may be filed with the California Department of Education (CDE) under the Uniform Complaint Procedure if: a child or group of children is in immediate physical danger; or the health, safety or welfare of a child or group of children is threatened. The CDE must directly intervene and not refer the complaint for a local investigation. [5 C.C.R. Secs. 4611(a) & 4650(a)(7)(C).] See questions regarding Compliance Complaints in Chapter 6, *Information on Due Process/Compliance Procedures*; see also CDE Legal Advisory LO:1-94, January 25, 1993, which states that the Department of Education interprets Section 4650 of Title 5 as applying to physical injury and threats and also to threats that are verbal or emotional.

21. Do the positive behavior intervention regulations have any impact on the discipline of special education students?

Yes. Before a student with a disability can be expelled, the district must conduct a manifestation determination IEP meeting. The IEP team reviews the relevant information from the student's file, including the IEP and any information from teachers and parents and then answers two questions: (1) Was the behavior caused by, or did it have “a direct and substantial relationship” to, the student's disability; and (2) Was the behavior the direct result of the district's failure to implement the IEP? If the IEP team answers “YES” to either question, the student cannot be referred for expulsion.

If a district wishes to expel a student for a behavior that has been targeted for change under a positive behavior intervention plan included in the student's IEP, the IEP team would almost certainly have to find that the behavior was related to the student's disability. Also, the district may have failed to implement the behavior intervention plan called for in the IEP. Under either circumstance, expulsion would be prohibited. Therefore, you must make sure that your child's behavior intervention plan or behavior support plan (included in the IEP)

specifically address your child's behaviors in a comprehensive way. This will better protect your child if he is recommended for expulsion for any of those behaviors.

However, school districts may suspend special education students for misconduct even though the behavior involved is targeted for change in the student's positive behavior intervention plan or behavior support plan — subject to the limitations discussed above regarding consecutive and total number of days.

For further information on the positive behavior intervention regulations, see Chapter 5, *Information on Related Services*.

22. If, after the manifestation determination (or 504) meeting, the team recommends a student for expulsion — and you choose not to challenge the recommendation through due process — what are the procedures for the expulsion hearing and for any appeals?

If the IEP team recommends a referral for expulsion, the district must then hold an expulsion hearing. The hearing must be scheduled to be held within thirty days after the decision to expel the student is made. [Cal. Ed. Code Sec. 48918.] Once scheduled, you have the right to automatically postpone the expulsion hearing for up to 30 days to adequately prepare. [Cal. Ed. Code Sec. 48918(a).] You should attend the hearing, with experts and supporters, to provide arguments against expulsion — usually the same arguments that were presented at the manifestation determination meeting.

A full discussion of the procedures governing expulsion hearings and for any appeals of the results of those hearings is beyond the scope of this manual. You should consult California Education Code sections 48918 — 48926 for more information, as well as your district policies for expulsion hearings.

23. The district proposes to remove my child from school because of his behavior problems and is recommending home instruction as his placement. Can the district do this?

Yes. However, any home instruction program must be individually designed to assure that progress toward goals and objectives continues, even if the program is being provided at the student's home. The law also requires that students have access to — and make progress in — the general education curriculum. [20 U.S.C. Sec. 1414(d)(1)(A)(i).] All the same procedures must be followed by the IEP team in developing an IEP for a student to be instructed at home as are followed for any other special education student. [U.S. Department of Education, Office of Special Education Programs, Letter to Boney (1991) 18 IDELR 537.]

Home instruction, one of the most restrictive placements, is an educational program option available to students with disabilities who cannot be educated in a public school setting. Typically, students in this placement have significant health needs, a temporary illness or disability or significant behavioral challenges. This placement should not be used as a substitute for providing behavioral supports in a classroom setting.

For more information about the number of daily hours of home instruction, see Chapter 4, *Information on IEP Process*.