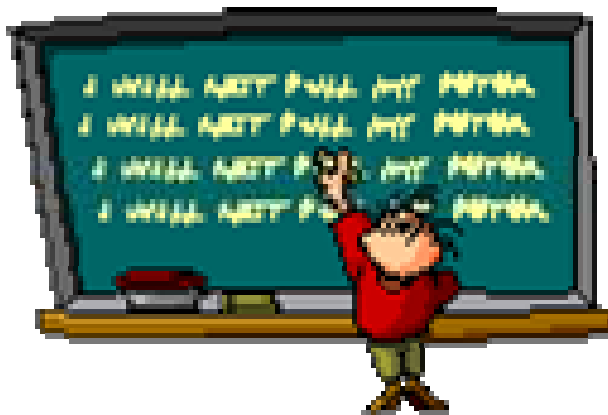


# EEK!

## My Child with a Disability Keeps Getting Suspended!

*What can I do?  
What are my child's rights?*



### Disability Rights California

Toll Free: 800.776.5746

100 Howe Ave., Suite 230-N <b>Sacramento</b> , CA 95825 Tel: 916.488.9950 – Fax: 916.488.9960 TTY: 800.719.5798	1330 Broadway, Suite 500 <b>Oakland</b> , CA 94612 Tel: 510.267.1200 – Fax: 510.267.1201 TTY: 800.649.0154
3580 Wilshire Blvd., Suite #902 <b>Los Angeles</b> , CA 90010 Tel: 213.427.8747 – Fax: 213.427.8767 TTY: 800.727.4546	1111 Sixth Ave., Suite 200 <b>San Diego</b> , CA 92101 Tel: 619.239.7861 – 619.239.7906 TTY: 800-576-9269

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# **EEK! My Child With A Disability Keeps Getting Suspended!**

## ***What Can I Do? What Are My Child's Rights?***

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“My son has behaviors that keep getting him into trouble at school. His teachers are all mad at him; they always call me or send him to the principal’s office, and he has even been suspended many times this school year. The school now wants to move my son into a more restrictive setting and the teachers also sometimes say that if my son keeps this up, they will have to expel or move him permanently. I am scared for him.”

If that sounds like your situation or if you have had a similar experience, there are some things you should know to help your child.

Although children with disabilities are generally treated as all other students regarding suspensions, there are certain limitations as to how and when children in special education may be suspended once a certain number of consecutive or cumulative suspension days have occurred. Also, there are state and federal laws on positive behavior interventions that could help your child learn more appropriate behaviors in order to lessen his/her likelihood of being suspended or expelled from school.

This publication will provide some basic information regarding your child’s rights if he/she is experiencing behavior problems and/or suspensions.

### *Topics Covered in this Publication:*

- A. Suspensions
- B. Positive Behavior Supports and Interventions
- C. Least Restrictive Environment & Placement

\*\*\* If your child is being considered for expulsion, or if the District has called you for a “manifestation determination” or “emergency” IEP regarding your child’s behavior, please also refer to our publication on expulsions for children with special needs, titled *YIKES! My Child With A Disability Is Being Considered for Expulsion!* \*\*\*

## **A. SUSPENSIONS**

Students with disabilities generally are treated the same as their nondisabled peers in suspension cases<sup>1</sup>, even for behaviors which are directly related to their disabilities. The difference between the treatment of children with and without disabilities has to do with the length of suspension and the number of suspension days that can be accumulated during a school year. Except under limited circumstances, a nondisabled student in California can be suspended for a period of 20 days cumulatively per school year<sup>2</sup>. However, a special education student generally may not be suspended or removed for more than 10 consecutive school days<sup>3</sup> without parental consent or a court or hearing officer's order. Under no circumstances should a special education student be prevented from receiving appropriate educational services for more than 10 consecutive school days without triggering a manifestation determination review and additional legal protections for students with disabilities.<sup>4</sup>

In a suspension, the school or District personnel has the authority to move a special education student from the current placement into another placement on a temporary basis, which is frequently referred to as an "interim alternative setting". However, the removal cannot be for more than 10 consecutive school days.<sup>5</sup> A special education student can also have multiple suspensions for separate offenses that add up or accumulate to more than 10 school days in a school year, as long as no single suspension exceeds 10 consecutive school days and together they do not form a pattern which can be considered a change of placement.<sup>6</sup>

However, a special education student must receive a free appropriate public education (FAPE) after being suspended for more than 10 cumulative days in a school year even if the suspension occurs in an interim alternative placement.<sup>7</sup> The District must provide services, to the extent necessary, in order to allow the student to progress appropriately in the general curriculum and to make progress toward achieving his/her IEP goals.<sup>8</sup> This means that on the 11<sup>th</sup> day of suspension in a school year, the District must provide the student with FAPE even though the student may not be in his/her current placement to receive his/her educational services.

For example, if a special education student gets suspended for fighting on school grounds, he could be suspended for up to 10 school days in a row and be kept out of school or even sent to another placement

for that time period. Then if, 4 weeks later, the same student is disruptive and shouts terrible obscenities at his teachers and peers, he could be suspended again for up to 10 additional school days in a row. However, because the second suspension would total more than 10 school days in a school year, the District must provide the student FAPE in the interim alternative setting. If the student gets suspended for 11 or more days in a row for any incident, then the suspension would automatically be considered a change of placement, and trigger special legal protections for students with disabilities who are being considered for expulsion.<sup>9</sup> All students, with and without disabilities, are limited to 20 total days of suspensions in a school year (except that it can be for as many as 30 total days in a year for students who are adjusting to a transfer to a new school).<sup>10</sup>

Remember that just because a District may have begun providing some services in an interim alternative setting as part of its obligation to ensure FAPE, it does not mean that the District is excused from observing the 10 consecutive day limit on suspensions or the total 20 day limit in a school year.

In some cases, a series of suspensions that add up to more than 10 total school days per school year may constitute a change of placement without an IEP meeting and parent consent if the suspensions represent a pattern of behavior. Factors such as the length of each removal, the total amount of time the student is removed, the proximity of the removals to one another, and the similarity of the child's behavior over the series of suspensions might be considered in deciding whether the pattern of suspensions look more like an unlawful change of placement or expulsion. If the suspensions seem to be a pattern, then the series of suspensions may constitute a change of placement.<sup>11</sup> If the suspensions can be considered a change of placement, then the IEP team has to hold a manifestation determination meeting, and all rights and duties regarding a change of placement apply<sup>12</sup>.

For example, if your child has already had 12 total school days of suspension and the school year is only halfway completed, you may be able to establish that the closeness in time of all the suspensions seems to represent a pattern. In addition, if all the suspensions were due to very similar behavioral incidents or very similar types of behavior, you likely could also argue that a pattern exists. For these reasons, your child's

suspensions could then be considered a change of placement without an IEP meeting or parent consent. In this example, if the 12 total school days of suspension or removal could be considered a change of placement, then additional legal protections for students with disabilities who are being considered for expulsion would then apply.

Chapter 8 of Disability Rights California's *Special Education Rights and Responsibilities (SERR)* manual discusses suspensions and expulsions in more detail. Please also refer Disability Rights California's publication on expulsion, titled *YIKES! My Child With A Disability Is Being Considered for Expulsion!*

## **B. POSITIVE BEHAVIOR INTERVENTIONS**

If your child has behaviors that impede or interfere with his/her learning or that of others, he/she is entitled to receive related services and other supplementary aids and services that may be necessary for your child to benefit from his/her special education program.<sup>13</sup> Special education laws require that the IEP team must, when appropriate, consider strategies, including assessments<sup>14</sup>, positive behavioral interventions and supports<sup>15</sup>, to address that behavior.

In addition, California has special behavior intervention rules, sometimes called the "Hughes Bill Behavioral Interventions". These special rules require an extensive and detailed assessment called "Functional Analysis Assessment (FAA)" or "Hughes Bill Assessment" and the development and implementation of a positive behavior intervention plan. The rules also prohibit the use of aversive behavior interventions.<sup>16</sup>

The FAA findings, information and recommendations are then used in developing a positive behavior intervention plan for the student. The plan becomes part of the student's IEP and has its own set of goals and objectives related to reducing maladaptive or unwanted behaviors and substituting those with acceptable and more appropriate behaviors. Furthermore, the behavior intervention plan can only be implemented by or be supervised by someone who has documented training in behavior analysis.<sup>17</sup>

If a student exhibits unpredictable spontaneous behavior which poses a clear and present danger to himself/herself or others, school personnel may use emergency interventions. However, an emergency intervention cannot be used for longer than is necessary to contain or control a behavior<sup>18</sup>. Furthermore, emergency interventions *should not* be used in place of the systematic behavioral intervention plan designed to change, replace or ameliorate a targeted behavior<sup>19</sup>.

Chapter 5 of Disability Rights California's *SERR* manual discusses related services, behavior interventions, emergency interventions and the prohibited behavioral interventions in more detail. Please also refer to the Behavioral Intervention Flowchart at the end of Chapter 5.

### **C. LEAST RESTRICTIVE ENVIRONMENT & PLACEMENT**

Least Restrictive Environment ("LRE") is the requirement in special education law that children with disabilities receive their education, to the maximum extent appropriate, with nondisabled peers. Special education laws also require that Districts consider whether each special education student can be educated satisfactorily in a regular classroom with supplementary aids and services before another more restrictive environment is considered.<sup>20</sup> This means that a special education student should not be removed from regular education classes unless, even with other services to help the student, the student is not able to make progress or benefit from the education in regular classes.

Under LRE requirements, the IEP team must document its rationale for recommending a placement that is different from the school and classroom that the student would attend if the student did not have a disability. The documentation should also indicate why the student's disability prevents his/her needs from being met in a less restrictive environment even with the use of supplementary aids and services. This means that *prior to* a recommendation to place a student with a serious behavior problem or other disabilities in a segregated placement, such as a special day class, nonpublic school or a residential placement, the IEP team should consider, provide, develop and/or implement support services such as counseling, AB3632 services<sup>21</sup>, a one-to-one behavior aide, behavior intervention plans, functional analysis assessment and other related services.

Furthermore, Title 2 of the California Code of Regulations, § 60100 provides:

Prior to the determination that a residential placement is necessary for the pupil to receive special education and mental health services, the expanded IEP team shall consider less restrictive alternatives, such as providing a behavioral specialist and full-time behavioral aide in the classroom, home and other community environments, and/or parent training in the home and community environments. The IEP team shall document the alternatives to residential placement that were considered and the reasons why they were rejected. Such alternatives may include any combination of cooperatively developed educational and mental health services.

This section of the California Code of Regulations further emphasizes and supports LRE. Section 60100 indicates that, prior to recommending or referring a child for placement in a residential educational program, the District may have to provide a one-to-one behavior aide outside of school hours. Due to the nature of his/her disability, a child may need additional assistance to enable him/her to remain in a non-residential educational placement, such as having a one-on-one educational aide in the early morning (to help get the child to school), and afternoons (to help the child transition back home).

***Note:*** *If you would like other chapters from the SERR manual or other publications, you can download them from Disability Rights California's website at [www.disabilityrightsca.org](http://www.disabilityrightsca.org) or you can request them by calling our office toll-free at (800) 776-5746*

### **Abbreviations to Legal Cites**

§, §§	Section, Sections
20 U.S.C.	Title 20 of the United States Code
34 C.F.R.	Title 34 of the Code of Federal Regulations
Cal. Ed. Code	California Education Code
5 C.C.R.	Title 5 of the California Code of Regulations

## Endnotes

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- <sup>1</sup> 20 U.S.C. §1415(k); Cal. Ed. Code § 48900.5, 48911.5; see also general suspension rules, Cal. Ed. Code §§48900-48915.5
- <sup>2</sup> Cal. Ed. Code §48903
- <sup>3</sup> 34 C.F.R. §300.530(b)
- <sup>4</sup> 34 C.F.R. §300.530(e); see also Disability Rights California’s publication: *YIKES! My Child With A Disability Is Being Considered for Expulsion!*
- <sup>5</sup> 34 C.F.R. §300.530(b)
- <sup>6</sup> 34 C.F.R. §300.530(b)
- <sup>7</sup> 34 C.F.R. §§ 300.530(b)(2) and (d)(4); and 300.536
- <sup>8</sup> 20 U.S.C § 1415 (k)(1)(D); 34 C.F.R. §§ 300.530(b)(2) and (d)
- <sup>9</sup> 34 C.F.R. § 300.530(e); see also Disability Rights California’s publication: *YIKES! My Child With A Disability Is Being Considered for Expulsion!*
- <sup>10</sup> Cal. Educ. Code § 48903
- <sup>11</sup> 34 C.F.R. § 300.536(a)(2)
- <sup>12</sup> 34 C.F.R. § 300.530(e); see also Disability Rights California’s publication: *YIKES! My Child With A Disability Is Being Considered for Expulsion!*
- <sup>13</sup> 20 U.S.C §1401(26) and (33); 34 C.F.R. § 300.34; Cal. Ed. Code §§ 56033.5, 56520 - 56525, 56363; and 5 Cal. Code Regs. §§ 3001 (d), (e) and (f), 3052
- <sup>14</sup> 34 C.F.R. § 300.304(b)(4); Cal. Ed. Code § 56320(f); see also: Assessment procedures, evaluations and reevaluations 34 C.F.R. §§ 300.303 – 300.305
- <sup>15</sup> Cal. Ed. Code §§ 56520, 56521 and 56523
- <sup>16</sup> Cal. Ed. Code §§ 56520 – 56525; 5 Cal. Code Regs. §§ 3001 (d), (e) and (f), and 3052
- <sup>17</sup> Cal. Ed. Code §§ 56520 – 56525; 5 Cal. Code Regs. §§ 3001 (d), (e) and (f), and 3052
- <sup>18</sup> 5 C.C.R. § 3052(i)(3)
- <sup>19</sup> 5 C.C.R. § 3052(i)(1)
- <sup>20</sup> 20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.114; Cal. Ed. Code §56031, 56342
- <sup>21</sup> AB3632 regulations require the District to develop agreements with local non-education agencies, such as County Departments of Mental Health (“CMH”) to provide services such as counseling, psychotherapy or family therapy. If a student is referred to a CMH under AB3632 and it is determined that the assessment is necessary, in most cases, CMH has 60 days to complete the assessment after receiving the parent’s written consent. Services provided under AB3632, like other related services, should be written into the IEP. More information regarding AB3632 services can be found in Chapter 9 of the Disability Rights California’s manual, *Special Education Rights and Responsibilities*. Gov. Code §§ 7570, *et seq.*; 2 Cal. Code Regs. §§ 60000, *et seq.*