

Excerpt from
Student Discipline Manual
2016

DISCIPLINING SPECIAL EDUCATION
STUDENTS

DISCIPLINING SPECIAL EDUCATION STUDENTS

LIST OF ABBREVIATIONS

BSP	Behavioral Support Plan
C.C.R.	California Code of Regulations
C.F.R.	Code of Federal Regulations
EDUC. CODE	California Education Code
FAPE	Free Appropriate Public Education
FBA	Functional Behavior Assessment
FED. REG.	Federal Register
IDEA	Individuals with Disabilities Education Act
IDEIA	Individuals with Disabilities Education Improvement Act
IDELR	Individuals with Disabilities Education Law Reporter
IEP	Individualized Education Program
IAES	Interim Alternative Educational Setting
LEA	Local Educational Agency
OAH	Office of Administrative Hearings
OCR	Office for Civil Rights
OSEP	Office of Special Education Programs
SEHO	California Special Education Hearing Office
U.S.C.	United States Code

RELEVANT STATUTES THAT AFFECT DISCIPLINE OF SPECIAL EDUCATION AND SECTION 504 STUDENTS

Federal law takes precedence over state law governing the same subject. Therefore, we must look to federal law concerning the discipline of special education students. The following federal laws may affect the discipline of students with disabilities:

- The IDEIA/IDEA (20 U.S.C. § 1400, et seq.) is federal law that sets forth statutory protections for public pre-school, elementary, and secondary students with disabilities. The IDEA applies to all recipients of federal financial assistance from the United States Department of Education, including the state of California. The implementing regulations for IDEA are found at 34 C.F.R. section 300.

- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) is a federal law that delineates that no otherwise qualified individual with a disability in the United States shall, solely by reason of his/her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any executive agency or by the United States Postal Service.

OVERVIEW OF DISCIPLINE FOR SPECIAL EDUCATION STUDENTS

A. Conduct Warranting Discipline: The conduct for which a special education student may be suspended or expelled is generally the same as the conduct warranting suspension or expulsion for a general education student.

B. Disciplinary Procedural Protections for Special Education Students: State and federal law require special **PROCEDURAL PROTECTIONS** for special education and Section 504 students facing suspension or expulsion, and each of these protections must be provided or the suspension or expulsion may be set aside as unlawful. (Educ. Code § 48915.5.) The special protections significantly alter the disciplinary procedures followed for general education students.

C. Major Provisions for Special Education Students (with IEPs):

1. **The 10 Consecutive-Day Suspension Rule.** Suspensions are limited to 10 consecutive school days in any school year. This rule is only for SPECIAL EDUCATION STUDENTS and is found in federal law, not state law! **This includes the period while expulsion proceedings are pending.** (34 C.F.R. §§ 300.530 and 300.536.)

2. **Expulsion.** Students with IEPs can be expelled from the school district as long as their behavior is not a manifestation of their disability.

3. **45-Day Removals.** Federal law allows for disciplinary removal for 45 school days for some offenses. (20 U.S.C. § 1415(k).)

4. **Manifestation Determination for Special Education Students.** Within 10 school days of any decision to change the placement of a student for a disciplinary reason (expulsion), a school district must convene an IEP team meeting to determine whether the misconduct is a manifestation of the student's disability. A student may not be disciplined for conduct that is a manifestation of a disability.

If the behavior that gave rise to the violation of the school code is determined **not** to be a manifestation of the student's disability, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities. However, once the student is removed from his/her current placement, he/she **must continue to receive educational services**, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals of a FBA, and write a BSP, or if the student has one, modify the BSP. This new placement is called an IAES.

5. **The School District Has a Duty to Provide Educational Services on the 11th Day of a Student's Disciplinary Absence from School.** After the 10th cumulative day of disciplinary absence (suspension), a school district must begin to provide continuing educational services to special education students on the 11th day in an IAES.

6. **School Districts Can Unilaterally Place a Student in an IAES.** If a student's behavior is NOT a manifestation of the student's disabilities, the school district may apply the same disciplinary procedures to disabled children as general education children. However, on the 11th day of suspension, the school district must provide educational services to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP, receive a FBA and write a BSP, or if the student has one, modify the BSP.

7. **Parents' Due Process Rights.** Parents have the right to file for a due process hearing to challenge an IEP team's manifestation determination or the information relied upon by the IEP team. If parents file for a due process hearing prior to an expulsion decision being rendered, no expulsion hearing may be conducted until the due process hearing and appeal are completed. The student must remain in his/her current placement (the student's placement at the time of filing the due process complaint) until the due process hearing decision is rendered.

STEPS TO TAKE WHEN EXPELLING A SPECIAL EDUCATION STUDENT

1. Student is involved in an incident.
2. **DETERMINE IF THE STUDENT HAS AN IEP AND RECEIVES SPECIAL EDUCATION SERVICES.**
3. Principal or principal's designee decides to recommend student for expulsion.
4. Suspension:
 - Typically, the principal or the principal's designee also suspends the student.
 - General education students can only be suspended for five consecutive days. (Educ. Code § 48903.)
 - Special education students can be suspended for 10 consecutive days. (20 U.S.C. § 1415.)

However, prior to the 10th CUMULATIVE day of suspension, the special education student's IEP team must meet for a manifestation determination IEP meeting.

5. The manifestation determination IEP meeting must be held within 10 cumulative days of suspension.
6. Date, time, and place of the IEP meeting for manifestation determination:
 - a. The parents have the right to participate in the IEP meeting through actual attendance, representation, or by telephone. However, the parents cannot require the school district to hold the IEP meeting beyond the 10th day of suspension. The school district must set up the IEP meeting to be held **prior** to the student having 11 cumulative days of suspension.
 - b. The meeting shall be held at a time and place **mutually agreeable** to the parents and the school district.
 - c. Each parent is entitled to notice of (1) his/her right to participate in the IEP meeting, (2) the fact that his/her child is being recommended for expulsion, and (3) a manifestation determination decision will occur at the IEP meeting.

d. The IEP meeting notice must be in writing and must indicate the purpose (manifestation determination), date, time, and location of the meeting and who will be in attendance. The notice must also inform parents or guardians of their right to bring others to the meeting who have knowledge or special expertise regarding the student. (The decision regarding who has knowledge or special expertise is based on the discretion of the person inviting that party to the IEP meeting.) A copy of the Procedural Rights and Responsibilities must be included with the notice sent to the parents.

e. The school district can hold the IEP meeting without the parents in attendance if it is unable to convince the parents or legal guardians that he/she should attend. In this event, the school district must maintain a record of its attempts to arrange a mutually agreed upon time and place as follows:

i. Detailed records of telephone calls made or attempted and the results of those calls;

ii. Copies of correspondence sent to the parent or legal guardian and any response received;

iii. Detailed records of visits made to the home or place of employment of the parents or legal guardians and the results of those visits;

iv. Detailed records of attempts to telephone the parents or legal guardians at the manifestation determination IEP meeting and conference them into the meeting by speaker phone. (Educ. Code § 56341.5(g) and (h).)

7. The manifestation determination IEP meeting:

a. Decisions to be made at the IEP meeting:

i. Was the student's conduct caused by, or did it have a direct and substantial relationship to, the student's disability? or

ii. Was the student's conduct the direct result of the school district's failure to implement the IEP?

b. If the answer to a.i. or a.ii. is "yes," the student's conduct is determined to be a manifestation of the student's disability.

c. After manifestation finding:

The IEP team shall - -

(1) Offer student's parents a consent for a FBA. After an assessment is agreed to, an IEP meeting will be held and a BSP will be offered for the student, provided the school district had not conducted such an assessment prior to the manifestation determination IEP meeting (for the same conduct);

(2) If a BSP has already been developed, the IEP team must review the BSP and modify it, as necessary, to address the behavior; and

(3) Return the student to the placement from which the student was removed, unless the parents and the LEA agree to a change of placement in an IEP plan.

d. Completion of the FBA is not necessary prior to a manifestation determination IEP meeting. All that is required is that the school district offer an assessment plan for a FBA to the student's parents after the IEP team makes a finding that the student's conduct is a manifestation of his/her disability.

8. Due Process Hearing:

During expulsion proceedings, parents have the right to file for a due process hearing to challenge the manifestation determination of the IEP team or the information relied upon by the IEP team. Parents can also file to challenge the district's determination that it had no basis of knowledge that the student had a disability.

Once the parents file for due process, no expulsion hearing can be conducted until the due process hearing and appeals have been exhausted. (20 U.S.C. § 1415.)

However, the student can remain in the IAES determined by the school district at the IEP meeting, as long as the school district provides educational services to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP; and receive a FBA and write a BSP, or if the student has one, to modify the BSP.

9. Stay Put:

Once a Student's parents file for a due process hearing, a special education student is entitled to remain in his/her current educational placement unless the parties agree otherwise.

Therefore, if the student engaged in an incident and the school district recommends that the student be expelled, if the conduct was a manifestation of his/her disability, that student cannot be expelled and is allowed to remain at the school site. The only legal way to not have the student return to the school site is to have the student's parents agree to another educational placement in an IEP meeting or through a court order.

10. Superior Court Orders:

School districts should consult with counsel about the availability of Superior Court Orders to keep a special education student away from their last agreed upon educational placement. (This is what may be necessary if you do not want the student to return to the school site, but he/she has the legal right to because his/her conduct was a manifestation of his/her disability).

A matter can be filed in the Kern County Superior Court requesting that the Judge order the student to remain off of the student's current school grounds. If a Court Order is granted which orders that the student not return to the school site, then the student does not have a right to return to his/her last agreed upon educational placement.

[DRAFT - TO BE FINALIZED ON DISTRICT LETTERHEAD]

**[Must be in the primary language of the student's
parents/guardians; to be mailed on the day of suspension]**

[Date]

[Name and Address]

Re: **[Student]**

Dear **[Parent]**:

This letter constitutes written notice that your child, **[name of student]**, is suspended from school effective immediately, and will not be allowed to return to school for the next _____ consecutive school days. This is also written notice that your child may be expelled pending the outcome of an Individualized Education Program (IEP) meeting. An expulsion hearing has already been set as detailed in the enclosed Notice of Expulsion Hearing.

The reasons for your child's disciplinary removal from school is because he/she did the following:

[SET FORTH FACTS LEADING TO DISCIPLINE DECISION AND THE STATUTORY VIOLATION]

The law requires that an IEP team meeting be convened before the 11th school day that a student is removed from school due to disciplinary reasons. The IEP meeting is set to determine whether a child's misconduct is a manifestation of his/her disability. By law, your child can be expelled only if his/her misconduct is not a manifestation of his/her disability. If the IEP team determines that your child's misconduct is a manifestation of his/her disability, the expulsion hearing described above will be cancelled.

As set forth in the attached IEP meeting notice, the IEP meeting has been set for **[date and time]** at **[location]**. The law also requires that the IEP meeting occur at a mutually agreeable time and location. However, the IEP meeting must occur within 10 school days of the recommendation to expel your child. If you wish to change the meeting date, time, or location, please contact _____ and we will work with you to arrive at a mutually agreeable date, time, and location; however, the IEP meeting must be within the next ___ school days. If you do not contact _____ to request a change, the IEP meeting will occur on the date and time and at the location that has been provided.

You have the right to attend the IEP meeting through actual attendance, by representation, or by telephone.

At the IEP meeting, the IEP team will make the following decisions:

- (1) Was the child's conduct caused by, or did it have a direct and substantial relationship to, the child's disability? or
- (2) Was the child's conduct the direct result of the school district's failure to implement the IEP?

If the IEP team determines that the child's misconduct was not a manifestation of his/her disability, the child's conduct will be reviewed by the school district's Board of Trustees to determine if the child should be expelled. The date, time, and location for the expulsion hearing is detailed in the attached Notice of Expulsion Hearing.

A full explanation of your due process rights is enclosed.

Very truly yours,

[Appropriate Administrator]

Attachments:

- Notice of Expulsion Hearing
- IEP Meeting Notice
- Procedural Rights and Responsibilities

REPORT OF IEP TEAM MANIFESTATION DETERMINATION MEETING

Expulsion proceedings are pending against:

Student: _____

Date of Birth: _____

This is a report of a manifestation determination IEP meeting held by the IEP team:

Date: _____

Time: _____

Location _____

The scribe for this meeting was _____.

The IEP team chair for this meeting was _____.

Those attending this meeting were:

Name	Title
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

1. Notification:

Written notification of this IEP team meeting was provided to the student's parent(s) or guardian(s) by:

___ Deposited in U.S. Mail (certified) by _____ on _____.

___ Personal delivery by _____ on _____.

___ Other (specify): _____

2. Procedural Rights and Safeguards:

Parent(s)/Guardian(s) hereby acknowledge that they received a copy of the Procedural Rights and Safeguards.

Parent(s)/Guardian(s) Signature(s): _____

Signature of Administrator
providing copy of rights: _____

3. Expulsion Hearing Information:

___ An expulsion hearing has not yet been set

___ An expulsion hearing has been set as follows:

Date: _____

Time: _____

Place: _____

4. School Identification Information:

Prior to disciplinary proceedings, student attended school at

___ Student is still attending his/her most recent educational placement.

___ Since (date) _____, student is now attending school at

___ Student is not attending school because:

___ home study since _____

___ hospitalized since _____

at _____

___ other (specify): _____

5. Description of Student's Disability:

(YES)(NO) Has student previously been identified as having a disability or disabilities?

If yes,

- On what date was the last eligibility assessment completed?

- What is the student's disability/disabilities?

If no, did the local educational agency (LEA) have knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred based on any of the following?

(YES)(NO) (1) The parents/guardians of the student expressed concern in writing to supervisory or administrative personnel of the LEA, or a teacher of the student, that the student was in need of special education and related services;

(YES)(NO) (2) The parents/guardians of the student requested an evaluation of the student pursuant to Section 300.300 through Section 300.311; or

(YES)(NO) (3) The teacher of the student, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education of the LEA or to other supervisory personnel of the LEA.

- If the answer is "yes" to (1), (2), or (3), what is the suspected disability/disabilities?

6. Manifestation Determination:

a. In terms of the behavior that is the subject of the disciplinary action, the IEP team must consider all relevant information including the following:

- (1) Behavior that is the subject of disciplinary proceedings, summarized as follows:

(YES)(NO) Copies of available police reports and school reports describing the behavior were reviewed by each IEP team member at this meeting.

(YES)(NO) An oral report describing the behavior was provided to each IEP team member at this meeting by the person making the expulsion recommendation or his/her designee. Person giving report:
_____.

(YES)(NO) Other written or oral reports describing the behavior were provided to each IEP team member as follows:
(specify): _____

(2) Any evaluation or diagnostic results, including the results or other relevant information supplied by the student's parents.

(3) Teacher observations of the student as follows: _____

(4) Information supplied by parents or guardians as follows:

(5) Student's prior disciplinary record.

(6) Student's relevant grade or progress reports.

(7) Student's relevant attendance record.

(8) Student's last agreed upon annual IEP (with any agreed upon addenda) and placement.

(9) Past IEPs that document similar behavior by student.

(10) Student's health records.

(11) Any Behavioral Support or Behavior Intervention Plan in effect at the time the behavior at issue occurred.

(12) The nature and extent of student's disability.

(13) Other (specify): _____

b. The IEP team must consider whether student's behavior was caused by, or a direct manifestation of, student's identified disability, and make the following determinations:

(1) Was student's conduct caused by, or did it have a direct and substantial relationship to, the student's disability? or

(2) Was student's conduct the direct result of the school district's failure to implement the IEP?

IF THE ANSWER IS "YES" TO EITHER b.(1) OR b.(2), THE BEHAVIOR MUST BE CONSIDERED A MANIFESTATION OF STUDENT'S DISABILITY.

7. Results of the manifestation determination by IEP team:

_____ Student's conduct was caused by, or had a direct and substantial relationship to, the student's disability? or

_____ Student's conduct was the direct result of the school district's failure to implement the IEP?

DECISION:

_____ YES: The incident is a manifestation of student's disability:
NO EXPULSION HEARING CAN BE HELD.

_____ NO: The incident is not a manifestation of student's disability:
THE SCHOOL DISTRICT CAN PROCEED TO AN
EXPULSION HEARING.

8. **IF STUDENT'S BEHAVIOR IS A MANIFESTATION OF STUDENT'S DISABILITY, THE IEP TEAM MUST:**

Consider the appropriateness of student's IEP and placement at the time of occurrence of the behavior that is the subject of disciplinary proceedings, and make the following determinations:

(1) Was an IEP in place when behavior occurred? (YES) (NO)

If yes, what was the date of that annual IEP (any addenda)?

(2) Was the IEP current? (YES) (NO)

(3) What part of the IEP, if any, was not implemented? (YES)(NO)

(4) Was there a behavioral support or intervention plan when the behavior occurred? (YES) (NO)

If **yes**, the BSP or BIP must be reviewed and modified to address the behavior that is the subject of the manifestation determination meeting.

(_____) Check if done.

If **no**, a FBA must be done and a BSP must be written and implemented to address the behavior that is the subject of the manifestation determination meeting. (_____) Check if done.

NOW THE IEP TEAM MUST TAKE IMMEDIATE STEPS TO REMEDY ANY DEFICIENCIES IN THE IEP PLAN.

The person responsible for coordinating the immediate steps to remedy any deficiency in the IEP, placement or implementation of the IEP, or services is: _____

9. Written notification of the IEP team's decision was provided to student's parents or guardians by:

___ Regular U.S. Mail by _____ on _____

___ Certified U.S. Mail by _____ on _____

___ Personal delivery by _____ on _____

___ Other (specify): _____

10. IF STUDENT'S BEHAVIOR IS NOT A MANIFESTATION OF STUDENT'S DISABILITY, THE IEP TEAM MUST:

Consider the extent of educational services necessary during expulsion to enable student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in student's IEP, as follows:

- a. At the time the behavior occurred, student's IEP set forth the following goals and objectives:

___ attached, or

___ listed here: _____

b. At the time the behavior occurred, student was receiving the following services:

(1) Regular Curriculum Courses and Electives:

Subject	Gen. Ed. Course	Spec. Ed. Course	Quantity (Freq/Duration)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(2) Special Education Services, Supplementary Aids and Services:

Describe Each Service	Quantity (Freq/Duration)
_____	_____
_____	_____
_____	_____

c. The IEP team determines that the following services are necessary during expulsion for student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP. (The IEP team determines the services that are necessary; if student is expelled, the expulsion hearing body will determine the site at which services are to be delivered.) The IEP team must also determine and document the positive behavior supports that will be implemented to ensure that the behavior violation does not recur.

Identify Each Course, Service or Election	Gen. Ed. or Special Ed.	Quantity (Freq/Duration)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

d. Where will the services be provided to student? (This is the interim alternative educational setting.) _____

(1) The above-described services have already been implemented pending an expulsion hearing. (YES)(NO)

(2) If not yet fully implemented, the person responsible for coordinating implementation of the above-described services is _____

- e. If appropriate, the IEP team must conduct a FBA and implement behavioral intervention services and modifications designed to address the behavior violation so it does not recur.

=====

Signature Section

=====

BASIS OF KNOWLEDGE THAT THE SCHOOL DISTRICT KNEW THAT THE STUDENT MAY HAVE A DISABILITY

The school district is deemed to have knowledge that a student is a student with a disability if:

1. The parents/guardians of the student have expressed concern in writing (or orally if the parents/guardians do not know how to write or have a disability that prevents a written statement) to personnel of the appropriate education agency that the student is in need of special education and related services;
2. The parents/guardians of the student have requested an evaluation of the student;
3. The teacher of the student or other personnel of the school district have expressed concern about the behavior or performance of the student to the director of special education of the agency or to other personnel in accordance with the agency's established child find or special education referral system;
4. The student's behavior or performance demonstrates the need for these services.

Exception to School District Basis of Knowledge that Student May Have a Disability.
A school district is not deemed to have knowledge that the student may be a student with a disability if:

1. The district conducted an evaluation and determined that the student was not a student with a disability and provided written notice of its determination to the student's parents/guardians.
2. The district determined that an evaluation was not necessary and provided written notice of its determination to the student's parents/guardians.
3. Parents/guardians provided written revocation of consent to special education and related services.
4. Parents/guardians did not allow an evaluation.
5. Parents/guardians refused service

SPECIAL EDUCATION STUDENTS 45-DAY REMOVALS

In two different situations, federal law permits a special education student to be removed for disciplinary reasons to an appropriate interim alternative educational placement for the same amount of time that a student without a disability would be subject to discipline, but for not more than 45 **SCHOOL** days.

A. **Dangerousness:** Under federal law, a due process hearing officer may order a student with disabilities to be placed in an appropriate IAES for up to 45 **SCHOOL** days upon a showing at an expedited hearing that the student's current placement is substantially likely to result in injury to the student or others.

B. **Specified Weapons and Drug Offenses:** Under federal law (20 U.S.C. § 1415(k)(1)(G)), a school district may unilaterally place a student with a disability in an appropriate IAES for up to 45 **SCHOOL** days if the student has committed the following offenses:

- The student carries or possesses a weapon to school or at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency, or
- The student 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 a State or local educational agency.
- The student has inflicted serious bodily injury upon another person while at school, on school premises or at a school function under the jurisdiction of a State or local educational agency.

C. Definitions:

1. The terms "weapon" and "drugs" are defined under federal, not state, law and can be expected to be narrowly construed: The terms "weapon" and "drugs" will be interpreted according to federal criminal law definitions. "The terms 'dangerous weapon' and 'controlled substance' in the text of [federal special education] regulations [are tied to] the content of other federal law [such as the definition of 'controlled substance' in section 202(c) of the Controlled Substances Act]."

2. Weapon is defined as: "a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length." (18 U.S.C. § 930(g).)

3. Illegal drug: is defined as: "a controlled substance" but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health care professional, or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

4. Controlled substance: is defined as a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act. (21 U.S.C. § 812(c).)

5. **Serious Bodily Injury:** is defined as bodily injury which involves: 1) substantial risk of death; 2) extreme physical pain, 3) protracted and obvious disfigurement; or 4) protracted loss or impairment of the function of a bodily member, organ or mental faculty.

D. **Difference from California law:**

1. California law allowing discipline for offenses committed going to or from school or school functions appears to be different from the federal requirements; the federal law changed, so it appears if a student carries a weapon to school, this can be used. However, if a student possesses, uses, sells or solicits the sale of a drug or are under the influence of a drug, or inflict serious bodily injury, it must be at school or a school function.

2. Forty-five days means 45 school days, and does not count the time school is closed for weekends, holidays, or summer vacation. This is a change in the law.

3. The IEP team must hold an **IEP meeting** to make a 45-day IAES recommendation; however, the school district can require the student to stay in the interim alternative setting for up to 45 school days regardless of whether the parents/guardians consent to the 45-day interim alternative educational setting.

4. Selection of setting for 45-day drug/weapons removal: An IEP team must determine what constitutes an appropriate IAES.

5. Educational requirements for 45-day setting: The IAES must:

Be selected so as to enable the student to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the student's current IEP, that will enable the student to meet the goals set out in that IEP.

6. Home instruction will **NOT** usually meet the requirements for disciplinary FAPE:

Whether home instruction would be an appropriate IAES would depend on the particular circumstances of an individual case such as the length of the removal, the extent to which the student previously has been removed from his/her regular placement, and include consideration of the student's needs and educational goals In general, though, because removals . . . will be for periods of time up to 45 days, care must be taken to ensure that if homebound instruction is provided for removals . . . the services that are provided will satisfy the requirements for a removal under 300.522(b). (Discussion of 34 C.F.R. § 300.522, 64 Fed.Reg. 12623, March 12, 1999.)

7. Advantages of 45-day drug/weapon removals:

i. Neither parental/guardian consent nor absence of manifestation is required for a 45-day removal for weapons or drugs.

ii. Stay put does not apply in drug/weapon 45-day removal cases. (20 U.S.C. § 1415(k).) Be aware, however, that in California, some parents/guardians are filing for a due process hearing and bringing a motion for stay put without informing the hearing office that the student is on a 45-day removal. In several cases, when the school district has opposed the stay put motion on the ground that the student has been removed under the 45-day removal provision and stay put does not apply, OAH has examined the merits of the school district's 45-day removal action and has ordered the removed student to be returned to his/her regular setting on the ground that the facts of the case do not meet the statutory criteria for 45-day removals.

iii. Multiple 45-day removals are possible within the same school year. "These regulations do not prohibit a child with a disability from being subjected to a disciplinary suspension, including more than one placement in a 45-day interim alternative educational setting in any given school year, if that is necessary in an individual case" (e.g., a student might be placed in an alternative setting for up to 45 days for bringing a weapon to school in the fall and for up to 45 days for using illegal drugs at school in the spring).

iv. A 45-day removal period can be "tacked" onto a 10-consecutive day period of suspension. "If a child engages in one of the behaviors (carrying a weapon to school or a school function or knowing possession or use of illegal drugs or selling or soliciting the sale of a controlled substance at school or a school function), the school may first remove the child for up to 10 consecutive school days while convening the IEP team to determine the interim alternative educational setting. At the end of that 10-day period, or earlier, if feasible, the child would be placed into the interim alternative educational setting for up to 45 days."

OVERVIEW OF DISCIPLINE FOR SECTION 504 STUDENTS

A. Conduct Warranting Discipline: The conduct for which a Section 504 student may be suspended or expelled is generally the same as the conduct warranting suspension or expulsion for a general education student.

B. Disciplinary Procedural Protections for Section 504 Students: State and federal law require special **PROCEDURAL PROTECTIONS** for special education and Section 504 students facing suspension or expulsion, and each of these protections must be provided or the suspension or expulsion may be set aside as unlawful. (Educ. Code § 48915.5.) The special protections significantly alter the disciplinary procedures followed for general education students.

C. Major Provisions for Section 504 Students:

1. **The 10 Consecutive-Day Suspension Rule.** Although it is not written out specifically in the law, the OCR considers a suspension of a student with a Section 504 plan for more than 10 days as a significant change in placement. A significant change in placement triggers a duty on the district to conduct a “reevaluation” which is a determination of whether the conduct is a manifestation of the student’s disability under his/her Section 504 plan.
2. **Expulsion.** Students with Section 504 plans can be expelled from the school district as long as his/her behavior is not a manifestation of his/her disability.
3. **Manifestation Determination for Section 504 Students.** Within 10 school days of any decision to change the placement of a student for a disciplinary reason (expulsion), a school district must convene a Section 504 meeting to determine whether the misconduct is a manifestation of the student’s disability. A student may not be disciplined for conduct that is a manifestation of disability.

If the behavior that gave rise to the violation of the school code is determined **not** to be a manifestation of the student’s disability, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities. **What is different for Section 504 students is that he/she is not legally required to continue to receive educational services**, as long as the student is treated the same way as a regular education student is treated. If a regular education student is suspended and not provided educational services prior to and after 10 days of suspension, the student with a Section 504 plan is not legally entitled to receive educational services if the student’s conduct is not a manifestation of the student’s disability.

However, the student must also receive, as appropriate, a FBA, and write a BSP, or if the child has one, modify the BSP.

4. The School District Does NOT have a Duty to Provide Educational Services on the 11th Day of a Student's Disciplinary Absence from School if the Student's Behavior is Not a Manifestation of His/Her Disability. The Section 504 student is treated like a regular education student and, therefore, if regular education students do not receive educational services when he/she is suspended prior to his/her expulsion, then the Section 504 student is not legally required to receive those educational services either.

5. School Districts Can Unilaterally Place a Child in an IAES. If a student's behavior is NOT a manifestation of the student's disabilities, the school district may apply the same disciplinary procedures to disabled children as general education children.

6. Parents' Appeal Rights. Parents have the right to file for a Section 504 appeal hearing to challenge a Section 504 team's manifestation determination or the information relied upon by the Section 504 team. If parents file for a Section 504 appeal hearing, the school district must set up an appeal hearing to determine whether the Section 504 team made correct decisions at the Section 504 manifestation determination meeting. However, the student does not have to remain in his/her current placement (the student's placement at the time of filing the due process complaint) until the Section 504 appeal hearing is held and a decision is rendered.

REPORT OF SECTION 504 TEAM MANIFESTATION DETERMINATION MEETING

Student: _____

Date of Birth: _____

Meeting Date: _____

Meeting Time: _____

Location _____

The scribe for this meeting was _____

The Section 504 Team chair for this meeting was _____

Those attending this meeting were:

Name	Title
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

1. Notification: Written notification of this Section 504 Team meeting was provided to student's parent(s)/guardian(s) by:

___ Deposited in U.S. Mail (certified) by _____ on _____.

___ Personal delivery by _____ on _____.

___ Other (specify): _____

2. Procedural Rights and Safeguards: Parent(s)/guardian(s) hereby acknowledge receipt of a copy of the procedural rights and safeguards under Section 504.

Parent(s)/Guardian(s) Signature(s): _____

Signature of Administrator
providing copy of rights: _____

3. Expulsion Hearing Information (If Applicable):

___ An expulsion hearing has not yet been set.

___ An expulsion hearing has been set as follows:

Date: _____

Time: _____

Place: _____

4. Expulsion Hearing Information:

___ An expulsion hearing has not yet been set

___ An expulsion hearing has been set as follows:

Date: _____

Time: _____

Place: _____

5. School Identification Information:

Prior to disciplinary proceedings, student attended school at

___ Student is still attending his/her most recent educational placement.

___ Since (date) _____, student is now attending school at

___ Student is not attending school because:

___ home study since _____

___ hospitalized since _____

at _____

___ other (specify): _____

6. Description of Student's Disability:

(YES)(NO) Has student previously been identified as having a physical or mental impairment that substantially limits a major life activity?

If yes:

- Date of the last eligibility determination:

- What is student's disability(ies)?

7. Manifestation Determination:

- a. In terms of the behavior that is the subject of disciplinary action, the Section 504 Team must consider all relevant information including the following:

- (1) Behavior that is the subject of disciplinary proceedings, summarized as follows:

- (YES)(NO) Copies of available police or school reports describing the behavior were reviewed by each Section 504 Team member at this meeting.

- (YES)(NO) An oral report describing the behavior was provided to each Section 504 Team member at this meeting by the person making the expulsion recommendation or his/her designee. Person giving report: _____

- (YES)(NO) Other written or oral reports describing the behavior were provided to each Section 504 Team member as follows:

(specify): _____

- (2) Any evaluation or diagnostic results, including the results or other relevant information supplied by the parents/guardians of the student;

- (3) Observations of student, as follows: _____

- (4) Information supplied by parents/guardians as follows: _____

- (5) Student's prior disciplinary record.
- (6) Relevant grade or progress reports.
- (7) Relevant attendance record.
- (8) Student's last agreed upon Section 504 Accommodation Plan (with any agreed upon amendments) and placement.
- (9) Student's health records.
- (10) Any Behavioral Support Plan (BSP) or Behavior Intervention Plan (BIP) in effect at the time the behavior at issue occurred.
- (11) The nature and extent of student's disability.
- (12) Other (specify): _____

b. The Section 504 Team must consider whether student's behavior was caused by, or a direct manifestation of, student's identified disability, and make the following determinations:

- (1) Was student's conduct caused by, or did it have a direct and substantial relationship to, student's disability? or
- (2) Was student's conduct the direct result of the district's failure to implement the Section 504 Accommodation Plan?

IF THE ANSWER IS "YES" TO EITHER b. (1) OR (2), THE BEHAVIOR MUST BE CONSIDERED A MANIFESTATION OF STUDENT'S DISABILITY.

8. Results of the Manifestation Determination by Section 504 Team:

- ___ Student's conduct was caused by, or had a direct and substantial relationship to, student's disability; or
- ___ Student's conduct was the direct result of the district's failure to implement the Section 504 Accommodation Plan; or
- ___ The behavior at issue is not a manifestation of student's disability.

DECISION:

- ___ YES: The incident is a manifestation of student's disability:
NO EXPULSION HEARING CAN BE HELD.
- ___ NO: The incident is not a manifestation of student's disability:
THE DISTRICT CAN PROCEED TO AN EXPULSION HEARING.

9. IF STUDENT'S BEHAVIOR IS A MANIFESTATION OF STUDENT'S DISABILITY, THE SECTION 504 TEAM MUST DO THE FOLLOWING:

Consider the appropriateness of student's Section 504 Accommodation Plan and placement at the time of occurrence of the behavior that is the subject of disciplinary proceedings and make the following determinations:

- (1) Was a Section 504 Accommodation Plan in place when behavior occurred?
(YES) (NO)

If yes, what was the date of that Section 504 Accommodation Plan (any amendments)?

- (2) Was the Section 504 Accommodation Plan current? (YES) (NO)
- (3) What part of the Section 504 Accommodation Plan, if any, was not implemented?
- (4) Was there a BSP or BIP when the behavior occurred? (YES) (NO)

If yes, what was the date of the BSP or BIP? _____

THE SECTION 504 TEAM MUST REVIEW THE BSP OR BIP AND MODIFY IT, AS NECESSARY, TO ADDRESS THE BEHAVIOR.

IF THERE WAS NO BSP OR BIP WHEN THE BEHAVIOR OCCURRED, THE SECTION 504 TEAM MUST CONDUCT A FUNCTIONAL BEHAVIORAL ASSESSMENT AND IMPLEMENT A BSP.

THE SECTION 504 TEAM MUST TAKE IMMEDIATE STEPS TO REMEDY ANY DEFICIENCIES IN THE SECTION 504 ACCOMMODATION PLAN.

The person responsible for coordinating the immediate steps to remedy any deficiency in the Section 504 Accommodation Plan, placement, or implementation of the Section 504 Accommodation Plan is:

10. Written notification of the Section 504 Team's decision was provided to student's parent(s)/guardian(s) by:

___ Regular U.S. Mail by _____ on _____

___ Certified U.S. Mail by _____ on _____

___ Personal delivery by _____ on _____

___ Other (specify): _____

11. IF STUDENT'S BEHAVIOR IS NOT A MANIFESTATION OF STUDENT'S DISABILITY, THE DISTRICT IS NOT REQUIRED TO PROVIDE SERVICES AND/OR ACCOMMODATIONS DURING THE EXPULSION PERIOD.

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Signature Section