

Riverside County Special Education Local Plan Area (SELPA)
Suspension and Expulsion Guidelines
For Students with Disabilities

Table of Contents

Suspensions	1
Education Code Violations	1
Suspension Related to School Activity	4
Total Number of Days of Suspension.....	5
Notification to Parents / District Policies and Procedures	5
Suspension of Students with Exceptional Needs	6
Limits of Suspension of Students with Disabilities	6
IEP Review Following Suspension.....	6
Alternatives to Suspension.....	7
Expulsion	8
Mandatory Referral for Expulsion.....	8
Exception for Students Enrolled In Charter Schools.....	9
Expulsion of Students with Exceptional Needs.....	10
Readmission of an Expelled Student	10
Manifestation Determination for Removal of Student with a Disability	10
Guidelines Regarding Removals.....	10
Practice Pointers	11
Students Served in Nonpublic Schools or Regional Programs	11
Nonpublic Schools.....	11
Regional Programs.....	11
County Community School Programs	12
Manifestation Determination Review	13
Conducting a Functional Behavioral Assessment	14
Interim Alternative Educational Settings.....	15
Provision of a Free Appropriate Public Education (FAPE).....	15
Students Served by Section 504	16
Protections for Students Not Determined Eligible for Special Education Services.....	16
Appendices	
1. Suspension and Expulsion Discipline Flow Chart	
2. Manifestation Determination Review Notice of IEP Team Meeting	
3. Manifestation Determination Review	

The Riverside County Special Education Local Plan Area (SELPA) has written these guidelines on suspension and expulsion of students with disabilities to supplement, not supplant, local education policies and procedures pertaining to suspension and expulsion, which is the foundation for discipline for all students. The majority of the information is derived from the California Education Code Section 48900 and Individual with Disabilities Education Act (IDEA) Title 34 of the Code of Federal Regulations (34 C.F.R.). A Suspension and Expulsion Discipline Flow Chart is available as Appendix 1.

Suspensions

This section provides information on Education Code Violations, suspensions related to school activities, total number of days of suspension, and notification to parents.

Education Code Violations

The California Education Code §48900 states that a student shall not be suspended from school or recommended for expulsion unless the superintendent or principal of the school in which the student is enrolled determines that the student has committed an act defined below:

- (a) (1) *Caused, attempted to cause, or threatened to cause physical injury to another person*
- (2) *Willfully used force or violence upon the person of another, except in self-defense*
- (b) *Possessed, sold, or otherwise furnished any firearm, knife, explosive, or other dangerous object, unless, in the case of possession of any object of this type, the student had obtained written permission to possess the item from a certificated school employee, which is concurred in by the principal or the designee of the principal*
- (c) *Unlawfully possessed, used, sold, or otherwise furnished, or been under the influence of, any controlled substance listed in Chapter 2 (commencing with §11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind*
- (d) *Unlawfully offered, arranged, or negotiated to sell any controlled substance listed in Chapter 2 (commencing with §11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind, and either sold, delivered, or otherwise furnished to any person another liquid, substance, or material and represented the liquid, substance, or material as a controlled substance, alcoholic beverage, or intoxicant*
- (e) *Committed or attempted to commit robbery or extortion*
- (f) *Caused or attempted to cause damage to school property or private property*
- (g) *Stolen or attempted to steal school property or private property*
- (h) *Possessed or used tobacco, or any products containing tobacco or nicotine products, including, but not limited to, cigarettes, cigars, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets, and betel. However, this section does not prohibit use or possession by a student of his or her own prescription products*
- (i) *Committed an obscene act or engaged in habitual profanity or vulgarity*
- (j) *Unlawfully possessed or unlawfully offered, arranged, or negotiated to sell any drug paraphernalia, as defined in §11014.5 of the Health and Safety Code*
- (k) *Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties*

Note: AB420 Amended Ed Code 48900(k) by eliminating suspension for disruption and willful defiance for students in kindergarten to grade 3. This limitation does not apply to a teacher's ability to suspend a student from their own classroom. Additionally, school districts will no longer have the authority to recommend expulsion based on disruption and willful defiance for any student regardless of grade level. These restrictions do not apply to suspensions or recommendations for expulsions based on other grounds, such as acts related to violence, controlled substances, bullying and vandalism. (*"New Law limits Suspensions and Expulsions for Willful Defiance and Disruption"*; Lozano Smith Legal Brief, Oct. 2014, Number 72)

- (l) *Knowingly received stolen school property or private property*
- (m) *Possessed an imitation firearm. As used in this section, "imitation firearm" means a replica of a firearm that is so substantially similar in physical properties to an existing firearm as to lead a reasonable person to conclude that the replica is a firearm*
- (n) *Committed or attempted to commit a sexual assault as defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal Code or committed a sexual battery as defined in Section 243.4 of the Penal Code*
- (o) *Harassed, threatened, or intimidated a pupil who is a complaining witness or a witness in a school disciplinary proceeding for the purpose of either preventing that pupil from being a witness or retaliating against that pupil for being a witness, or both*
- (p) *Unlawfully offered, arranged to sell, negotiated to sell, or sold the prescription drug Soma*
- (q) *Engaged in, or attempted to engage in, hazing. For purposes of this subdivision, "hazing" means a method of initiation or pre-initiation into a pupil organization or body, whether or not the organization or body is officially recognized by an educational institution, which is likely to cause serious bodily injury or personal degradation or disgrace resulting in physical or mental harm to a former, current, or prospective pupil. For purposes of this subdivision, "hazing" does not include athletic events or school-sanctioned events.*
- (r) *Engaged in an act of bullying. For purposes of this subdivision, the following terms have the following meanings:*
 - (1) *"Bullying" means any severe or pervasive physical or verbal act or conduct, including communications made in writing or by means of an electronic act, and including one or more acts committed by a pupil or group of pupils as defined in §48900.2, §48900.3, or §48900.4, directed toward one or more pupils that has or can be reasonably predicted to have the effect of one or more of the following:*
 - (A) *Placing a reasonable pupil or pupils in fear of harm to that pupil's or those pupils' person or property.*
 - (B) *Causing a reasonable pupil to experience a substantially detrimental effect on his or her physical or mental health.*
 - (C) *Causing a reasonable pupil to experience substantial interference with his or her academic performance.*
 - (D) *Causing a reasonable pupil to experience substantial interference with his or her ability to participate in or benefit from the services, activities, or privileges provided by a school.*

(2) (A) "Electronic act" means the transmission, by means of an electronic device, including, but not limited to, a telephone, wireless telephone, or other wireless communication device, computer, or pager, of a communication, including, but not limited to, any of the following:

(i) A message, text, sound, or image.

(ii) A post on a social network Internet Web site including, but not limited to:

(I) Posting to or creating a burn page. "Burn page" means an Internet Web site created for the purpose of having one or more of the effects listed in paragraph (1).

(II) Creating a credible impersonation of another actual pupil for the purpose of having one or more of the effects listed in paragraph(1). "Credible impersonation" means to knowingly and without consent impersonate a pupil for the purpose of bullying the pupil and such that another pupil would reasonably believe, or has reasonably believed, that the pupil was or is the pupil who was impersonated.

(III) Creating a false profile for the purpose of having one or more of the effects listed in paragraph (1). "False profile" means a profile of a fictitious pupil or a profile using the likeness or attributes of an actual pupil other than the pupil who created the false profile.

(B) Notwithstanding paragraph (1) and subparagraph (A), an electronic act shall not constitute pervasive conduct solely on the basis that it has been transmitted on the Internet or is currently posted on the Internet.

(3) "Reasonable pupil" means a pupil, including, but not limited to, an exceptional needs pupil, who exercises average care, skill, and judgment in conduct for a person of his or her age, or for a person of his or her age with his or her exceptional needs.

(s) [see below for information about participation in school activities]

(t) A pupil who aids or abets, as defined in Section 31 of the Penal Code, the infliction or attempted infliction of physical injury to another person may be subject to suspension, but not expulsion, pursuant to this section, except that a pupil who has been adjudged by a juvenile court to have committed, as an aider and abettor, a crime of physical violence in which the victim suffered great bodily injury or serious bodily injury shall be subject to discipline pursuant to subdivision (a).

(u) As used in this section, "school property" includes, but is not limited to, electronic files and databases.

(v) For a pupil subject to discipline under this section, a superintendent of the school district or principal may use his or her discretion to provide alternatives to suspension or expulsion that are age appropriate and designed to address and correct the pupil's specific misbehavior as specified in §48900.5.

(w) It is the intent of the Legislature that alternatives to suspension or expulsion be imposed against a pupil who is truant, tardy, or otherwise absent from school activities.

In addition to the reasons specified in §48900, a student may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the student is enrolled determines that the student has:

- Committed sexual harassment as defined in Section 212.5. For the purposes of this chapter, the conduct described in Section 212.5 must be considered by a reasonable person of the same gender as the victim to be sufficiently severe or pervasive to have a negative impact upon the individual's academic performance or to create an intimidating,

hostile, or offensive educational environment. This section shall not apply to students enrolled in kindergarten and grades 1 to 3, inclusive. (EC §48900.2)

- *Caused, attempted to cause threatened to cause, or participated in an act of, hate violence, as defined in subdivision (e) of Section 233. (Applies to a student in any of grades 4 to 12, inclusive) (EC §48900.3)*
- *Intentionally engaged in harassment, threats, or intimidation, directed against school district personnel or students, that is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting classwork, creating substantial disorder, and invading the rights of either school personnel or students by creating an intimidating or hostile educational environment. (Applies to a student in any of grades 4 to 12, inclusive) (EC §48900.4)*
- *Made terroristic threats against school officials or school property, or both. For the purposes of this section, "terroristic threat" shall include any statement, whether written or oral, by a person who willfully threatens to commit a crime which will result in death, great bodily injury to another person, or property damage in excess of one thousand dollars (\$1,000), with the specific intent that the statement is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, or for the protection of school district property, or the personal property of the person threatened or his or her immediate family. (EC §48900.7)*

Suspension Related to School Activity

A pupil may not be suspended or expelled for any of the acts enumerated in this section, unless that act is related to school activity or school attendance occurring within a school under the jurisdiction of the superintendent or principal or occurring within any other school district. A pupil may be suspended or expelled for acts that are enumerated in this section and related to school activity or attendance that occur at any time, including, but not limited to, any of the following: (EC §48900(s))

- (1) While on school grounds*
- (2) While going to or coming from school*
- (3) During the lunch period whether on or off the campus*
- (4) During, or while going to or coming from, a school sponsored activity*

A superintendent or principal may use his or her discretion to provide alternatives to suspension or expulsion, including, but not limited to, counseling and an anger management program, for a pupil subject to discipline under this section. (EC §48900 (v)) It is the intent of the Legislature that alternatives to suspension or expulsion be imposed against any student who is truant, tardy, or otherwise absent from school activities. (EC §48900(w))

If an individual with exceptional needs is excluded from school bus transportation, the pupil is entitled to be provided with an alternative form of transportation at no cost to the pupil or parent or guardian provided that transportation is specified in the pupil's individualized education program. (EC §48915.5 (c))

Total Number of Days of Suspension

The total number of days for which a pupil may be suspended from school shall not exceed 20 school days in any school year, unless for purposes of adjustment, a pupil enrolls in or is transferred to another regular school, an opportunity school or class, or a continuation education school or class, in which case the total number of school days for which the student may be suspended shall not exceed 30 days in any school year. For the purposes of this section, a school district may count suspensions that occur while a pupil is enrolled in another school district toward the maximum number of days for which a student may be suspended in any school year. (EC §48903)

The principal of the school, the principal's designee, or the superintendent of schools may suspend a pupil from the school for any of the reasons enumerated above in §48900, for no more than five consecutive school days (EC §48911).

Suspension by the principal, the principal's designee, or the superintendent of schools shall be preceded by an informal conference conducted by the principal or the principal's designee or the superintendent of schools between the pupil and, whenever practicable, the teacher, supervisor, or school employee who referred the pupil to the principal, the principal's designee, or the superintendent of schools. At the conference, the pupil shall be informed of the reason for the disciplinary action and the evidence against him or her and shall be given the opportunity to present his or her version and evidence in his or her defense.

A principal, the principal's designee, or the superintendent of schools may suspend a pupil without affording the pupil an opportunity for a conference only if the principal, the principal's designee, or the superintendent of schools determines that an emergency situation exists. "Emergency situation," as used in this article, means a situation determined by the principal, the principal's designee, or the superintendent of schools to constitute a clear and present danger to the life, safety, or health of pupils or school personnel. If a pupil is suspended without a conference prior to suspension, both the parent and the pupil shall be notified of the pupil's right to a conference and the pupil's right to return to school for the purpose of a conference. The conference shall be held within two school days, unless the pupil waives this right or is physically unable to attend for any reason, including, but not limited to, incarceration or hospitalization. The conference shall then be held as soon as the pupil is physically able to return to school for the conference.

Notification to Parents / District Policies and Procedures

At the time of suspension, a school employee shall make a reasonable effort to contact the pupil's parent or guardian in person or by telephone. Whenever a pupil is suspended from school, the parent or guardian shall be notified in writing of the suspension. A school employee shall report the suspension of the pupil, including the cause therefor, to the governing board of the school district or to the school district superintendent in accordance with the regulations of the governing board. The parent or guardian of any pupil shall respond without delay to any request from school officials to attend a conference regarding his or her child's behavior. No penalties may be imposed on a pupil for failure of the pupil's parent or guardian to attend a conference with school officials. Reinstatement of the suspended pupil shall not be contingent upon attendance by the pupil's parent or guardian at the conference. (EC §48911)

Districts are required to implement appropriate policies and procedures to ensure parent participation (34 CFR 300.500). An even higher standard is held for parental involvement for students with disabilities being considered for disciplinary action. District policies and procedures must ...

- *include a provision that if disciplinary action is considered to change a student with a disability's placement for 10 days or more, the parents will be notified on the same day this decision is made a given a copy of their rights or Notice of Procedural Safeguards (34 CFR 303.530).*
- *require that, if neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the district uses other methods to ensure their participation, including individual or conference telephone calls or video conferencing (34 CFR 300.322(c), 300.328, 300.501(c)(3)).*
- *require that, if a placement decision was made by a group without the involvement of a parent, the district has a record of the attempts made to ensure their involvement (34 CFR 300.501(c)(4)).*
- *include a provision that parents will be informed that they have the right to pursue a due process hearing if they disagree with the decisions of the IEP team regarding expulsion (34 CFR 300.530-537, EC 48915.5(a)).*
- *include a provision that the expulsion hearing will be conducted only after the IEP team convenes and makes the required findings (34 CFR 300.530-537, EC 48915.5(a)).*
- *include a provision that relevant disciplinary procedures applicable to all children will be carried out only when it has been determined that the student's placement was appropriate and that the behavior was not a manifestation of the student's disability (34 CFR 300.530-537, EC 48915.5(a)).*

Suspension of Students with Exceptional Needs

Suspension of students with exceptional needs requires that the school administrators and IEP team members understand the limits of suspension of students with disabilities, requirements for IEP review following suspension, and alternatives to suspension.

Limits of Suspension of Students with Disabilities

As noted previously, the principal of the school, the principal's designee, or the superintendent of schools may suspend a pupil from the school for any of the reasons enumerated in §48900. An individual with exceptional needs may be suspended for up to, but not more than 5 consecutive school days. The student may be suspended for up to 10 days before an IEP team manifestation determination meeting is required. The student can be removed for more than 10 days for separate acts of misconduct, as long as the removals do not constitute a pattern. During any removal of more than 10 days the school must provide services to the extent determined necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals on his or her IEP.

IEP Review Following Suspension

An IEP meeting is not required prior to suspending a student with a disability up to 10 days. However, it is recommended that the IEP team should meet to review a pupil's placement and program when the pupil is experiencing serious discipline problems leading to multiple suspensions. It is required that the IEP team conducts an IEP manifestation determination review when a pupil's suspensions total 10 days. The IEP team must determine how the student will receive FAPE on the 11th and any subsequent days of suspension. The team will also determine if additional assessment is needed, if the misconduct was caused by, or had a

direct and substantial relationship to the pupil's identified disability, and if the pupil is appropriately placed.

***NOTE:** The IEP team must hold a manifestation determination meeting after every suspension beyond 10 days of a student with a disability.

Alternatives to Suspension

According to Education Code §48900.5 *a suspension shall be imposed only when other means of correction fail to bring about proper conduct. A superintendent or principal may use his or her discretion to provide alternatives to suspension or expulsion, including, but not limited to, counseling and an anger management program, for a student subject to discipline under this section. However, a student, including an individual with exceptional needs as defined in §56026, may be suspended for any of the reasons enumerated in §48900 upon a first offense, if the principal or superintendent of schools determines that the student violated subdivision (a), (b), (c), (d), or (e) of §48900 or that the student's presence causes a danger to persons or property or threatens to disrupt the instructional process.*

***NOTE:** Whenever possible, teachers and administrators should implement interventions and consequences in response to a student's misbehavior that do not involve removing the student from his or her educational setting. Some suggestions for interventions prior to suspension: (EC §48900.5(b))

- Use of a classroom behavior management system that is positive, fair, consistent, and understood
- Redirection of the student back to task
- Discussion with student
- Discussion with parent
- Conference between school personnel, the student's parent/guardian and student
- Loss of privilege or points; change in conduct grade etc.
- A positive behavioral support approach with tiered interventions that occur during the school day
- Implementation of Tier 2 positive behavioral interventions
- Detention (after school) with time for the teacher and student to review alternative ways the student could respond and behave in the classroom that would be more appropriate
- After-school programs that address specific behavioral issues or expose students to positive activities and behaviors
- Referral of student to school psychologist and/or mental health provider
- Participation in a restorative justice program
- Adjustment of the student's classes and schedule
- If the student has an IEP, request to hold an IEP team meeting to:
 - ✓ Describe the target (problem) behavior in observable and measurable terms on the IEP
 - ✓ Develop IEP goals (and objectives if appropriate) to address target behavior

- ✓ Determine level of behavioral intervention needed and document strategies on the appropriate form (e.g., Tier 2 Positive Behavioral Interventions, Tier 3 Positive Behavioral Intervention Plan)
- ✓ Identify supports and resources necessary to implement behavioral interventions and supports

***NOTE:** As of January 1, 2018, AB 667 requires schools to **inform students** about other means of correction that were attempted before suspending a student at the mandatory informal disciplinary conference.

Expulsion

This section provides information on situations requiring a mandatory referral for expulsion, exception for students enrolled in charter schools, expulsion of students with exceptional needs, and readmission of an expelled student.

Mandatory Referral for Expulsion

*The principal or the superintendent of schools **shall recommend** the expulsion of a pupil for any of the following acts committed at school or at a school activity off school grounds, unless the principal or superintendent finds that expulsion is inappropriate, due to the particular circumstance: (EC §48915)*

- (1) *Causing serious physical injury to another person, except in self-defense*
- (2) *Possession of any knife or other dangerous object of no reasonable use to the pupil*
- (3) *Unlawful possession of any controlled substance listed in Chapter 2 (commencing with §11053) of Division 10 of the Health and Safety Code, except for either of the following:*
 - (i) *The first offense for the possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis.*
 - (ii) *The possession of over-the-counter medication for use by the pupil for medical purposes or medication prescribed for the pupil by a physician.*
- (4) *Robbery or extortion*
- (5) *Assault or battery, as defined in §240 and §242 of the Penal Code, upon any school employee*

If the principal or the superintendent of schools makes a determination as described above, he or she is encouraged to do so as quickly as possible to ensure that the pupil does not lose instructional time. (EC §48915(a)(2))

A decision to expel shall be based on a finding of one or both of the following:

- (1) *Other means of correction are not feasible or have repeatedly failed to bring about proper conduct.*
- (2) *Due to the nature of the act, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.*

*The principal or superintendent of schools **shall** immediately suspend, pursuant to §48911, and shall recommend expulsion of a pupil that he or she determines has committed any of the following acts at school or at a school activity off school grounds (EC §48915(c)):*

- (1) *Possessing, selling, or otherwise furnishing a firearm. This subdivision does not apply to an act of possessing a firearm if the pupil had obtained prior written permission to possess the firearm from a certificated school employee, which is concurred in by the principal or the designee of the principal. This subdivision applies to an act of possessing a firearm only if the possession is verified by an employee of a school district. The act of possessing an imitation firearm, as defined in subdivision (m) of Section 48900, is not an offense for which suspension or expulsion is mandatory pursuant to this subdivision and subdivision (d), but it is an offense for which suspension, or expulsion pursuant to subdivision (e), may be imposed.*
- (2) *Brandishing a knife at another person*
- (3) *Unlawfully selling a controlled substance listed in Chapter 2(commencing with Section 11053) of Division 10 of the Health and Safety Code*
- (4) *Committing or attempting to commit a sexual assault as defined in subdivision (n) of Section 48900 or committing a sexual battery as defined in subdivision (n) of § 48900*
- (5) *Possession of an explosive*

Following a meeting with the parent/guardian the suspension for the student will be extended until the expulsion proceedings are completed. If the pupil is a foster child, as defined in §48853.5, the district superintendent of schools or the district superintendent's designee, including, but not limited to, the educational liaison for the school district, shall also invite the pupil's attorney and an appropriate representative of the county child welfare agency to participate in the meeting. (EC §48911(g))

The governing board shall order a pupil expelled upon finding that the pupil committed an act listed above, and shall refer that pupil to a program of study that meets all of the following conditions (EC §48915(d)):

- (1) *Is appropriately prepared to accommodate pupils who exhibit discipline problems*
- (2) *Is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school*
- (3) *Is not housed at the school site attended by the pupil at the time of suspension*

Exception for Students Enrolled In Charter Schools

For students enrolled in a charter school, it is important to consider the language within the charter to determine if the student is being expelled based on Education Code or dismissed base on the language of the charter. Unless the charter includes specific education code language regarding expulsions, the procedures delineated in the charter will prevail as determined by The California Court of Appeal, Fourth District, who ruled that a charter school student was not entitled to an evidentiary hearing before expulsion because Education Code §48918 requiring such hearing does not apply to charter schools; the charter did not incorporate section 48918; and the student was “dismissed” under the terms of the charter rather than expelled. (Scott B. v. Board of Trustees of Orange County High School of Arts (June 14, 2013, G047177)___ Cal.App.4th___ [2013 WL 2687979].) The Court holds charter schools to a different standard for discipline than traditional public schools by distinguishing dismissal, as provided for in the charter, and expulsion, as provided by the Education Code.

Expulsion of Students with Exceptional Needs

School personnel may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under §300.536). (34C.F.R. §300.530)*

***NOTE:** While the Code of Federal Regulations allows up to 10 consecutive days, the California Education Code §48911 allows only 5 consecutive days.

*** NOTE:** *A student with disabilities who is expelled from school is still entitled to a free appropriate public education (34C.F.R. §300.530(d); EC §48915.5(b)).*

Readmission of an Expelled Student

When a pupil is expelled, the governing board typically outlines terms and conditions for readmission to the district. The pupil may apply for readmission and be considered for reinstatement by the governing board upon satisfactory completion of the terms and conditions in the rehabilitation assignment. *Upon reinstatement, the governing board may order the expungement of any or all records of the expulsion proceedings. (EC §48917(e)). A pupil shall not be denied enrollment or readmission to a public school solely on the basis that he or she has had contact with the juvenile justice system (EC §48645.5(b)).*

When a pupil has an expulsion suspended, the governing board typically reassigns the student to an educational setting wherein he/she can simultaneously work toward satisfactory completion of the terms and conditions in the rehabilitation plan. If a student on a suspended expulsion reoffends (violates the provisions of EC §48900) again during the time of the suspended expulsion, he/she is immediately expelled and the regular readmission criteria apply.

Manifestation Determination for Removal of Student with a Disability

Included in this section are guidelines and/or legal references regarding removals, students served in nonpublic schools or regional programs, the manifestation determination review process, conducting a functional behavioral assessment, provision of free appropriate public education (FAPE), and interim alternative education settings.

Guidelines Regarding Removals

Below is a table consisting of various types of removals and whether or not a Manifestation Determination is required as a result of a change in placement.

Type of Removal	Change in Placement?	Manifestation Determination Required?
Short-term removal of <u>< 10 days</u>	NO	NO
Short-Term Removals Totaling > 10 Cumulative Days AND does NOT constitute a pattern	NO	YES
Series of Short-Term Removals Totaling > 10 Cumulative Days AND constitutes a pattern	YES	YES

Long-Term removals > 10 Consecutive Days	YES	YES
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Fagen, Friedman & Fulfroost, LLP (2007)

Practice Pointers

- A student with a disability cannot be suspended or expelled from school for a long-term removal of more than 10 cumulative days due to behaviors that are a manifestation of his or her disability.
- Services (FAPE) must continue for students with disabilities who are suspended or expelled from school during any subsequent days of removal after the 10th day, and less than 10 days if services are provided to students without disabilities in similar removals.
- When the removal is NOT a change of placement, school personnel must consult at least one of the teachers of the student with a disability to determine the extent to which services are needed 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.
- ***NOTE:** *On the date of the decision to suspend or recommend the child for expulsion, school personnel must notify the parents of the child and provide the parents with a copy of the procedural safeguards notice. (34C.F.R. §300.530(h))*
- *The LEA shall notify a foster child's attorney and the appropriate representative of the county child welfare agency of potential expulsion proceedings pending manifestation determination. (EC 48853.5(c))*

Students Served in Nonpublic Schools or Regional Programs

Students with disabilities served in special day classes operated (a) by a certified nonpublic school or (b) by a regional provider such as the Riverside County Office of Education (RCOE) are subject to the same suspension and expulsion guidelines contained in this document and pertinent Board of Education policies of the student's district of residence. Students enrolled in a county operated Community School Program have slightly different procedures.

Nonpublic Schools

The site principal of a contracting nonpublic, nonsectarian school providing services to individuals with exceptional needs under §56365 and §56366, shall have the same duties and responsibilities with respect to the suspension of pupils with previously identified exceptional needs prescribed for the suspension of pupils under §48911. (EC §48911.5)

The nonpublic school shall have a written policy regarding suspension procedures, which includes a process for documenting actions that may lead to expulsion and a process for communicating with the district of residence. The student's district of residence is responsible for taking the team members through the manifestation determination review process. Should the case move forward for further disciplinary action, the student's district of residence school personnel and Board of Education shall conduct the necessary procedures.

Regional Programs

When it is determined that a special education student enrolled in a regional (County) operated special day class has committed an act that prompts expulsion proceedings by the district of attendance, the Coordinator/Principal or his/her designee shall immediately, within 24 hours, notify the school district of residence by telephone to identify the expellable act and follow-up with a written report of the incident to the Superintendent/designee and the Special Education Administrator.

The Coordinator-Principal/administrator or designee will work cooperatively with the district of residence to schedule a Manifestation Determination IEP team meeting. The district of residence will determine the appropriate district IEP team representative(s) for the meeting. The Coordinator-Principal/administrator will identify County program staff necessary for the IEP team meeting and coordinate the notification of the meeting at least 48 hours in advance of the meeting.

County Community School Programs

A student who is expelled by a school district may enroll in county Community School. In such cases, should the student violate any of the acts listed under EC §48915, he or she will be expelled by RCOE without going back through the district of residence since that agency already expelled the pupil.

SB 1111 narrowed the pupils who may be enrolled and established safeguards in the community school transfer process.

The most notable changes to the law under SB 1111, including important changes related to student placements in expulsion process where expulsion is not recommended by the hearing officer or administrative hearing panel, are summarized as follows:

- **Homeless Students.** *"Homeless children" have been removed as a specific category of students who may be referred for enrollment in a community school.*
- **SARB Referrals:** *County community schools may still enroll students referred by a school district pursuant to the SARB process, but only if the district and county office of education determine the community school: (1) has space available, (2) will meet the child's educational needs, and (3) the parent has not objected to the transfer. The grounds on which a parent may object include: (1) reasonable concerns regarding the student's safety; (2) geographic accessibility to the community school by the student; or (3) inability to obtain transportation to the community school. Education Code section 1981 now also provides requirements regarding alternative placement options for a student whose parent or guardian objected to the referral, and the right for students to return to their prior school or other "appropriate school" in the district at the end of the semester following the semester when the acts leading to the community school referral occurred. (Ed. Code, § 1981.)*
- **Probation Referrals.** *Community schools are still permitted to enroll students who are on probation, with or without the supervision of a probation officer, if consistent with an order of the juvenile court. Such students who were involuntarily transferred to a community school have the right to re-enroll in their former school or another comprehensive school immediately after the court-ordered placement ends. (Ed. Code, §§ 1981, subd. (c)(1)(A), 1981.5.) A community school may also enroll students who are on probation or parole and not in attendance at any school, if the parent consents. (Ed. Code, § 1981, subd. (c)(2).)*
- **Probation Officer Supervised Student.** *Students under supervision of a probation officer may be enrolled in a community school, with consent of the minor, minor's parent, and/or responsible adult appointed by the juvenile court, as applicable. For such students, the child's attorney or educational rights holder may address with the juvenile delinquency court any change of placement resulting in enrollment in a community school that is not the child's school of origin, and may, during a court hearing, raise concerns as to whether the community school meets the student's educational needs. (Ed. Code, § 1981, subd. (c)(1)(B)-(E).)*

- **Expelled Students.** Community schools may still enroll students referred by a school district due to expulsion under Education Code section 48915, subdivisions (a) and (c). However, SB 1111 made a notable revision to Education Code section 48918, which now provides that if a hearing officer or administrative hearing panel does not recommend a student's expulsion, the student must be permitted to return to their previous classroom instructional program from which their expulsion referral was made, unless the parent requests another placement in writing. Before the parent makes a placement decision, the district superintendent must consult with the pupil's teachers and parent regarding other school placement options. If a hearing officer or administrative hearing panel finds that a pupil committed an act for which the pupil must be suspended and recommended for expulsion under Education Code section 48915, subdivision (c), but does not recommend expulsion, the pupil must be immediately reinstated and may be referred to their prior school, another comprehensive school, or continuation school. (Ed. Code, § 48918, subd. (e).) Students involuntarily transferred to a community school due to expulsion are also now entitled to re-enroll in their former school or another comprehensive school immediately after the expulsion ends. (Ed. Code, § 1981.5.)
- **Enrollment and Involvement in Juvenile Justice System.** Education Code section 1981 now provides that enrollment in a community school of a student due to a probation order, probation officer supervision, or expulsion must be consistent with Education Code section 48645.5, subdivision (b), i.e., such enrollment cannot be denied due to a student's contact with the juvenile justice system. (Ed. Code, § 1981, subd. (c)(4).)
- **Parent Request.** Community schools may enroll students whose school districts approve such enrollment at the request of a student's parent, but only if space is available and if it will promote the pupil's educational interests. If a parent rescinds the request to enroll their child in a community school, the pupil must be immediately re-enrolled in the school they attended at the time of the referral, or with parent consent, another appropriate school in the student's school district. (Ed. Code, § 1981, subd. (d).)
- **English Language Learners and Students with Disabilities.** SB 1111 revised Education Code section 1983 to specify county board of education responsibilities regarding English learners and students with disabilities. (Ed. Code, § 1983, subd. (g).)

Lozano Smith, August 2015

Manifestation Determination Review

Manifestation Determination Reviews need to be conducted for students with a disability when a change of placement occurs because:

- A. The student has 10 cumulative days of suspension AND the removal constitutes a change in placement – IEP team meets to determine if the offenses are related to the student's disability and to see if they need to make changes in supports, services and/or placement to address the needs of the student. (34C.F.R. §300.530(d)(4))
- B. The student is suspended pending expulsion (34C.F.R. §300.530(d)(5))

Per federal regulations (34C.F.R. §300.530(e-g)), such reviews need to occur within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct. The LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the

student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents.

***NOTE:** A written report of the "review" is provided to the parent at the IEP meeting. The following SELPA forms must be utilized in conducting Manifestation Determination Reviews. See the IEP Manual for directions on how to complete these forms.

- Notice of Manifestation Determination Review IEP Team Meeting (Appendix 2)
- Notice of Procedural Safeguards
- Manifestation Determination Review pages 1-3 (Appendix 3)
- IEP Amendment
- IEP Team Meeting Comments/Continuation Page

***NOTE:** Any formal reports referenced in the review and the cumulative records should be available to the parents and the IEP team at the meeting. If any existing assessment is more than 2 years old or if adequate information is not available to make a manifestation determination, the IEP team may wish to initiate a formal pre-expulsion assessment. The LEA must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors, and include information about social and emotional status in the assessment report.

It is the responsibility of the IEP team to determine —

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

If the IEP team determined that the violation was not a manifestation of the student's disability and was not the direct result of failure to implement the IEP, school personnel will apply relevant disciplinary procedures in the same manner and duration as would be applied to a student without a disability. (34 CFR 300.530(c)).

The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that either of the above conditions was met. If this determination was made, the LEA must take immediate steps to remedy those deficiencies by either of the following actions:

- i. Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or*
- ii. If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior.*
- iii. In addition, except as provided in special circumstances allowing for placement in an interim alternative education setting, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.*

Conducting a Functional Behavioral Assessment

Either before or not later than 10 school days after either first removing the child for more than 10 cumulative school days in a school year or commencing a removal that constitutes a change of placement (expulsion), if the LEA did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the child before the behavior that resulted in the

removal from school, the agency shall convene an IEP meeting to develop an assessment plan. As soon as practicable after developing the assessment plan, the LEA shall convene an IEP meeting to develop appropriate behavioral interventions to address that behavior, and shall implement those interventions. If the child already has a behavioral intervention plan, the IEP team shall meet to review the plan and its implementation, and modify the plan and its implementation as necessary to address the behavior. (34C.F.R. §300.530(e)) See the Riverside County SELPA IEP Manual and/or Website (www.rcselpa.org) for directions on how to complete the positive behavioral intervention plan forms and more information on development and implementation of such plans.

Interim Alternative Educational Settings

School personnel may remove a student to an Interim Alternative Education Setting (IAES) setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability if the student:

1. Carries a weapon to or possesses a weapon at school on school premises, or to or at a school function under the jurisdiction of a State Education Agency (SEA) or LEA;
2. Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school on school premises, or at a school function under the jurisdiction of the SEA or LEA; or
3. Has inflicted serious bodily injury upon another person while at school on school premises, or at a school function under the jurisdiction of the SEA or LEA.

The IEP team will determine the appropriate alternative education setting and services for this placement. (34C.F.R. §300.531) Parents can appeal the Alternative Education Setting or Manifestation Determination decision by requesting a hearing through the complaint process. (34C.F.R. §300.532) A LEA may appeal the decision if they believe maintaining the current placement of the child is substantially likely to result in injury to the child or others by requesting a hearing through the complaint process. (34C.F.R. §300.532)

Provision of a Free Appropriate Public Education (FAPE)

A LEA does not need to provide services during periods of removal of a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if services are not provided to a child without disabilities who has been similarly removed. (34 C.F.R. §300.530 (b)(1))

In the case of a child with a disability who has been removed from his or her current placement for more than 10 school days in that school year, the LEA, for the remainder of the removals, must provide services to the extent necessary to enable the child 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. §300.530 (b)(2))

For behavior that is not a manifestation of the child's disability and a change in placement may occur, services must be provided. (34 C.F.R. §300.530 (d))

***NOTE:** The student's IEP team determines the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP if the student is removed because of behavior that has been determined **not** to be a manifestation of the student's disability.

If the IEP team determines the behavior is a manifestation of the student's disability, the IEP team should determine if further services are required and/or implement positive behavioral interventions and supports to address the student's needs.

The IEP team will make the determination of the appropriate interim alternative educational setting, if the removal is for drugs, weapons or infliction of serious bodily injury offenses (34 C.F.R. §300.530 (g)(2)(i)(ii)); or based on a hearing officer determination that maintaining the current placement of the child is substantially likely to result in injury to the child or to others if he or she remains in the current placement. (34 C.F.R. §300.532 (b)(2)(ii))

The State must ensure that all children with disabilities aged 3 through 21 residing in the State have the right to FAPE, including children with disabilities who have been suspended or expelled from school. (34 C.F.R §300.101)

***NOTE:** In *Letter to Ramirez*, 113 LRP 3448 (OSEP December 5, 2012), OSEP opined that a hearing officer is *permitted, but not required*, to determine whether a student's conduct violated school rules.

Students Served by Section 504

Students who qualify as disabled under Section 504 of the Rehabilitation Act may be entitled to the same procedural safeguards as special education students. The LEA and site level school personnel should have a master list of students who have a 504 Plan. If such a student begins experiencing serious discipline problems, the team should reconvene to consider if the misconduct was caused by or is a direct manifestation of the student's identified disability and if the student was/is appropriately placed.

Protections for Students Not Determined Eligible for Special Education Services

A student may assert the same protections provided to students with disabilities if the LEA had knowledge that the student was a student with a disability prior to the behavior that required disciplinary actions occurred.

The *Basis of Knowledge* is determined by the following:

- The parent of the child expressed a concern in writing to school personnel that they believe their child requires special education and related services.
- The parent of the child in writing requested an evaluation for special education and related services.
- The teacher of the student, or other school personnel, have expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education or site administrator.

***NOTE:** When determining *Basis of Knowledge*, it is important to consider information provided in all contexts including 504 meetings and student study team meetings. Also, districts must not limit "patterns of behavior" to behaviors that are associated with disciplinary incidents.

The following are exceptions to the *Basis of Knowledge*:

- If the parent of the student would not allow the LEA to conduct an evaluation for special education or related services.
- The student has been evaluated for special education and related services and did not meet the eligibility requirements.

If no *Basis of Knowledge* exist prior to the behavior which requires disciplinary actions,

- The LEA may use disciplinary measures which apply to students without disabilities who engage in comparable behaviors.
- If a request for assessment is made during this time period, an expedited evaluation will be conducted.
- During the evaluation period, the student will remain in the educational placement determined by school authority, which may include the continuation of the suspension and/or expulsion without educational services.
- If the evaluation determines the student meets eligibility requirements for special education and related services, the LEA must provide appropriate services in accordance to the student's IEP.

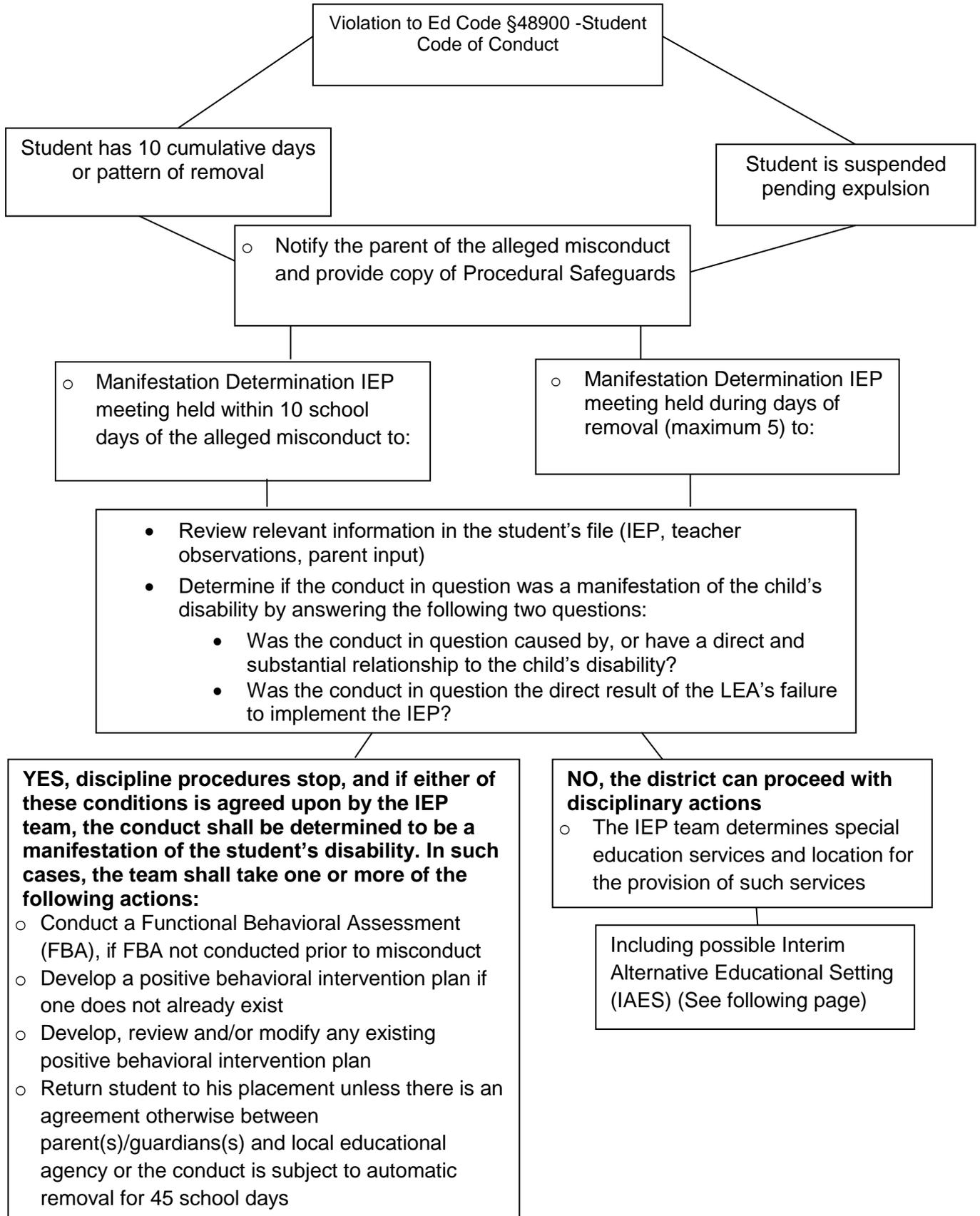
Approved: May 20, 2011

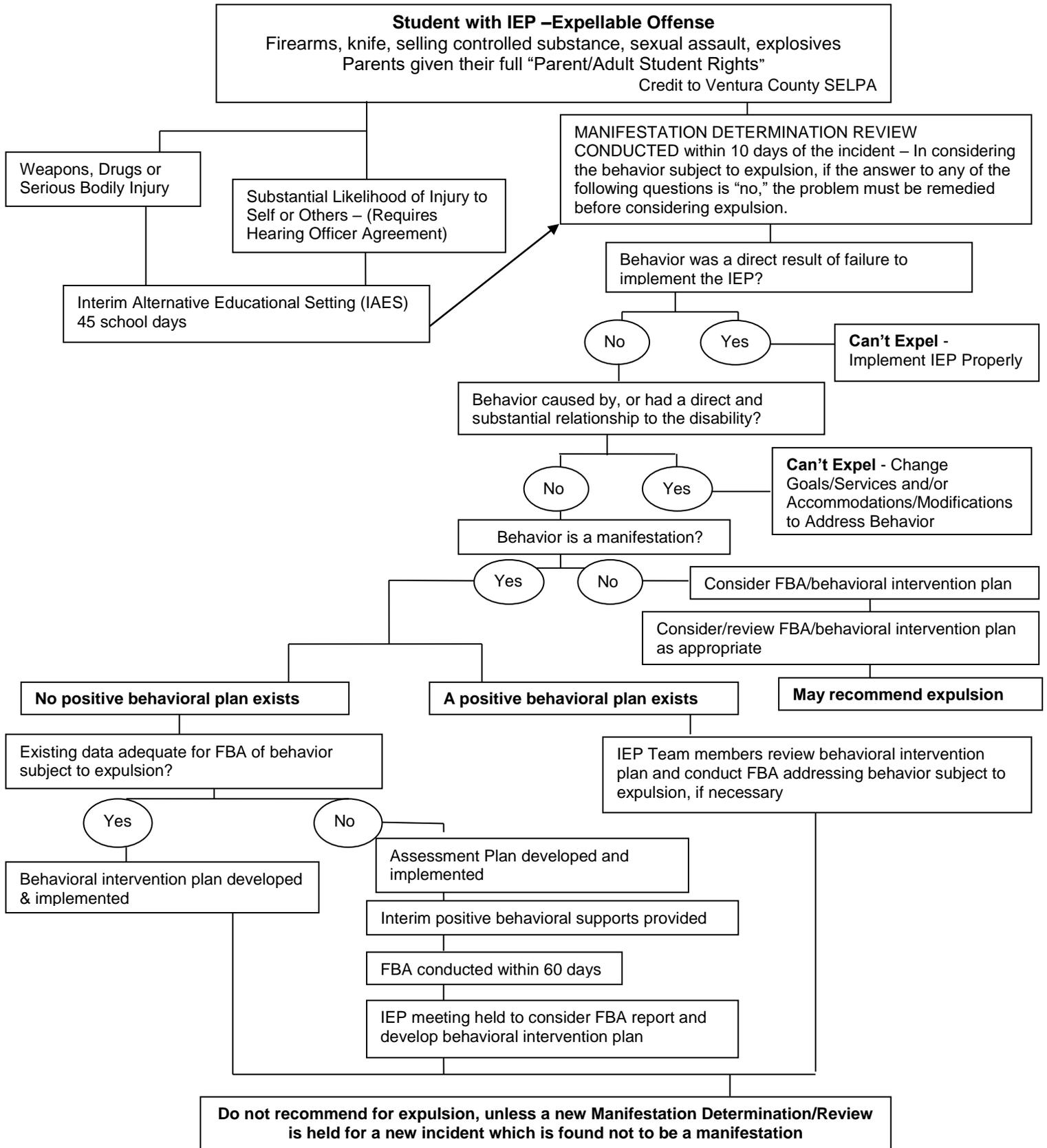
Revised November 16, 2012

Revised September 20, 2013

Revised August 14, 2015

Riverside County Special Education Local Plan Area Suspensions and Expulsions Discipline Flow Chart







**RIVERSIDE SPECIAL EDUCATION LOCAL PLAN AREA (SELPA)
MANIFESTATION DETERMINATION REVIEW
IEP TEAM MEETING NOTICE**

The use and distribution of this form is limited to employees of public school agencies within the Riverside County Special Education Local Plan Area (SELPA)

Date of Notice: __ / __ / ____

To the Parents/Guardian/Surrogate/Adult Student of: _____

Parent(s) Name: _____ Address: _____

Manifestation Determination IEP Meeting Scheduled Date: __ / __ / ____ Time: __ : __ a.m. p.m.

Location: _____ District Contact Person: _____ Phone: (____) ____ - ____

The following have been invited to the meeting:

- | | | |
|--|--|--|
| <input type="checkbox"/> Principal/Designee | <input type="checkbox"/> General Education Teacher | <input type="checkbox"/> Program Specialist |
| <input type="checkbox"/> Special Education Teacher | <input type="checkbox"/> Student | <input type="checkbox"/> Agency Representative(s): |
| <input type="checkbox"/> School Psychologist | <input type="checkbox"/> School Nurse | <input type="checkbox"/> Other: |
| <input type="checkbox"/> RS Provider(s): | <input type="checkbox"/> Special Education Administrator | <input type="checkbox"/> Other: |

The parent/guardian may bring a representative who has knowledge or special expertise regarding the student.

► **PURPOSE OF A MANIFESTATION DETERMINATION REVIEW: To review the relationship between the student’s disability and the behavior subject to disciplinary action; to adjust the student’s IEP; conduct a Functional Behavioral Assessment (FBA) and/or develop or review a positive behavioral intervention plan if appropriate.**

If you were not contacted regarding the need for additional assessment, the review will be based on existing assessments and diagnostic results, including relevant information supplied by parents, observations of your student, and review of your student’s IEP.

It is not the function of the IEP team to determine whether or not your student will be disciplined. The IEP team will not address whether or not your student actually carried out the alleged misconduct which led to the disciplinary action. It is the function of the IEP team to ensure that your student’s rights as an individual with an IEP are fully considered when he or she is involved in the school discipline process.

If expulsion is a consideration, depending on the findings of the IEP Team, an interim alternative educational setting may also be discussed. When an interim alternative educational setting is appropriate, federal law requires the alternative placement to be selected so as to enable your child to continue to participate in the general curriculum and to receive services and modifications described in the IEP. The district may unilaterally enroll a student in an appropriate interim alternative educational setting for up to 45 school days in cases involving weapons, drugs or the occurrence of serious bodily injury to another.

Enclosed with this notice, please find a copy of your Parents’ Rights and Procedural Safeguards.

Please initial below and return completed form to the school:

- _____ I plan to attend the meeting either in person or via telephone (circle one)
- _____ I do not plan to attend the meeting
- _____ I plan to attend the meeting and will bring the following person(s): _____

Parent/Guardian/Adult Student signature indicating receipt of this notice: _____



**RIVERSIDE SPECIAL EDUCATION LOCAL PLAN AREA (SELPA)
MANIFESTATION DETERMINATION REVIEW**

The use and distribution of this form is limited to employees of public school agencies within the Riverside County Special Education Local Plan Area (SELPA)

Meeting Date: ___ / ___ / ___

PURPOSE OF MEETING:

To review the relationship between the student's disability and the behavior subject to disciplinary action; to adjust the student's IEP; conduct a Functional Behavioral Assessment (FBA) and/or develop or review a positive behavioral intervention plan if appropriate.

A. **10 or More Days of Suspension**

B. **Prior to Extension of Suspension**

Addendum to most recent agreed-upon IEP written (date) ___ / ___ / ___

Student Name: _____	
Birthdate: ___ / ___ / ___	Age: _____ Grade: _____ Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female
District of Residence: _____	District of Service: _____
Case Carrier: _____	School of Attendance: _____
Parent/Guardian/Surrogate: _____	Home Phone: (___) ___ - ___
E-mail address: _____	Other: (___) ___ - ___

Indicate the date for each of the following:

___ / ___ / ___ First day of current suspension

___ / ___ / ___ Parent/guardian notified of date and time of Manifestation Review IEP Team Meeting. *(Procedural Safeguards included with Notice of Meeting)*

___ / ___ / ___ If parent/guardian not in attendance, copies of written documentation of attempts to contact are attached.

Summary of student's alleged misconduct: (Education Code Violation 48900, ____, ____)

On (date) ___ / ___ / ___, the Student Allegedly _____

NOTE: School personnel may remove a student to an interim alternative educational setting (IAES) for up to 45 school days when drugs, weapons or serious bodily injury to another is evident and while a suspension or expulsion is being considered. Prior parental consent is not required for this placement. **Check all that apply:** Carried a weapon to or possessed a weapon at school, on school premises, or to or at a school function Knowingly possessed or used illegal drugs, or sold or solicited the sale of a controlled substance, while at school, on school premises, or at a school function Inflicted serious bodily injury upon another person while at school, on school premises, or at a school function.

Date of (IAES) Placement: ___ / ___ / ___ IAES Setting: _____

Relevant Disciplinary History (Please complete a review of the student's behavior across settings.)

A. Referrals (# & reasons):

B. Bus Suspensions (# & reasons):

C. Suspensions from School (# & reasons):

D. Expulsion(s):

E. Other Means of Correction:

F. Other:



**RIVERSIDE SPECIAL EDUCATION LOCAL PLAN AREA (SELPA)
MANIFESTATION DETERMINATION REVIEW**

The use and distribution of this form is limited to employees of public school agencies within the Riverside County Special Education Local Plan Area (SELPA)

Student Name: _____

Meeting Date: ___ / ___ / ___

Current Educational Review:

1. Yes No Student had an IEP prior to incident
2. Assessments, Evaluations and/or Diagnostic Materials reviewed? Yes No Relevant Information:
3. Identified disability that qualifies student for Special Education:
4. Educational placement, including supplementary aids and services described in the last signed IEP:
5. Yes No Review of records reveals that student had a behavior indicating a need for behavior supports.

If "Yes" marked above address the following:

Intervention	In Place	Being Implemented
IEP behavioral goals	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Tier 2 Positive Behavioral Interventions (PBI)	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Tier 3 Positive behavioral intervention plan	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

6. Attendance record reviewed? Yes No
Relevant Information:

7. Health record reviewed? Yes No
Relevant Information:

Teacher Observations:

Relevant information provided by parent/guardian:

Other relevant information including unique circumstances to be considered:



RIVERSIDE SPECIAL EDUCATION LOCAL PLAN AREA (SELPA) MANIFESTATION DETERMINATION REVIEW

The use and distribution of this form is limited to employees of public school agencies within the Riverside County Special Education Local Plan Area (SELPA)

Student Name: _____

Meeting Date: ___ / ___ / ___

MANIFESTATION DETERMINATION REVIEW FINDINGS:

The relevant members of the IEP team, and other qualified personnel, having reviewed and considered at least the relevant information described above, determine:

- Agree Disagree 1. The conduct in question was caused by, or had a direct and substantial relationship to the student's disability.
- Agree Disagree 2. The conduct in question was the direct result of the local educational agency's failure to implement the IEP.

If either of these conditions is agreed upon by the IEP team, the conduct shall be determined to be a manifestation of the student's disability. In such cases, the team shall take one or more of the following actions:

- Conduct a Functional Behavioral Assessment (FBA), if FBA not conducted prior to misconduct
- Develop a positive behavioral intervention plan if one does not already exist
- Develop, review and/or modify any existing positive behavioral intervention plan
- Return student to his placement unless there is an agreement otherwise between parent(s)/guardians(s) and local educational agency or the conduct is subject to automatic removal for 45 school days

TEAM RECOMMENDATIONS PRIOR TO EXTENSION OF SUSPENSION: Complete ONLY if student is being considered for expulsion.

- The conduct in question was not caused by, or did not have a direct and substantial relationship to the student's disability.

OR

- The conduct in question was not the direct result of the local education agency's failure to implement the IEP.
(Check only if all boxes on the previous page are marked "Disagree".)

See attached IEP Team Amendments page for IEP Team recommendations.