

**SUSPENSION AND EXPULSION/DUE PROCESS (INDIVIDUALS WITH EXCEPTIONAL NEEDS)****Suspension**

A student enrolled in a special education program is subject to the same grounds for suspension which apply to nonhandicapped students. All the procedural safeguards established by district policies and regulations shall be observed in considering the suspension of special education students, including the requirement that, depending on the nature of the misconduct, some form of in-school intervention be used prior to suspension to show that suspension was imposed only when other means of correction failed to bring about proper conduct. (Education Code 48900.5) However, a student may be suspended upon a first offense.

*(cf. 5152 - Suspension and Expulsion/Due process)*

*(cf. 6159.4 - Behavioral Interventions)*

The Superintendent or designee may suspend a special education student for up to five school days for a single incident of misconduct, and for up to twenty school days in a school year. In addition, the Superintendent or designee may suspend a special education student for up to, but not more than, ten consecutive school days for a single incident of misconduct if he or she poses an immediate threat to the safety of himself/herself or others. Also, in the case of a dangerous child, a suspension may exceed ten consecutive school days, or the student's placement may be changed, or both, if the parent/ guardian so agrees or if a court order so provides. (Education Code 48911)

**Expulsion**

Procedures and time lines governing the expulsion of special education students shall be the same as those for other students specified in BP 5138.1, except that a pre-expulsion assessment shall be made and an individualized education program (IEP) team meeting held under conditions and with possible consequences as follows:

1. The parent/guardian shall receive written notice of the district's intent to conduct the pre-expulsion assessment and shall make the student available for the assessment without delay at a site designated by the district. The parent/guardian shall also have the right to an independent assessment as provided in Education Code 56329. (Education Code 48915.5)

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2. The pre-expulsion educational assessment shall be conducted in accordance with the guidelines of the Code of Federal Regulations, Title 34, Section 104.35, which shall include a review of the student's placement at the time of the alleged misconduct and a determination of the relationship, if any, between the student's behavior and his/her disability. (Education Code 48915.5)
3. An IEP meeting shall be held to determine if an expulsion hearing is appropriate. This meeting shall be held at a time and place mutually convenient to the parent/guardian and district within the period, if any, of the student's pre-expulsion suspension. The parent/guardian's participation may be made through actual participation, representation, or a telephone conference call. (Education Code 48915.5)

*(cf. 5182 - Identification of individuals with Disabilities)*

4. The parent/guardian shall be notified of his/her right to participate in the meeting at least 48 hours before the meeting.

This notice shall specify:

- a. That the meeting may be held without the parent/guardian's participation unless he/she requests a postponement for up to three additional school days, and
- b. That the suspension will be continued during the postponement if the student continues to pose an immediate threat to the safety of himself/herself or others. (Education Code 48915.5)

In order to make a record of its efforts to arrange the meeting at a time and place mutually agreed upon, the district shall keep documentation such as:

- (1) Detailed records of telephone calls made or attempted and the results of those calls.
- (2) Copies of correspondence sent to parents/ guardians and any responses received.

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- (3) Detailed records of visits made to the parent/guardian's home or place of employment and the results of those visits. (Code of Federal Regulations, Title 34, Section 300.345)
5. The district shall grant a parent/guardian's request that the meeting be postponed for up to three additional school days and may extend a student's suspension for the period of postponement if he/she continues to pose an immediate threat to the safety of himself/herself or others. However, the suspension shall not be extended beyond ten consecutive school days unless agreed to by the parent/guardian or by court order. If the parent/guardian refuses to consent to an extension beyond ten consecutive school days and chooses not to participate, the meeting may be conducted without the parent/guardian's participation. (Education Code 48915.5)
6. The IEP team shall consider the pre-expulsion assessment results and shall also review and consider the student's health records and school discipline records. (Education Code 48915.5)
7. If the IEP team determines that the alleged misconduct was caused by, or a direct manifestation of, the student's disability or that the student was not appropriately placed, the expulsion shall not proceed.
8. If the IEP team determines that the alleged misconduct was not caused by, or was not a direct manifestation of, the student's disability, and if it is determined that the student was appropriately placed, the student shall be subject to expulsion in accordance with procedures that apply to all students. (Education Code 48915.5)

If the parent/guardian disagrees with the IEP team's decision, he/she has a right to a due process hearing conducted pursuant to Section 1415 of Title 20 of the United States Code. (Education Code 48915.5)

Due process appeals must be initiated within 15 days of the IEP team's decision.

If the state's special education due process hearing is initiated by the parent/guardian due to a disagreement with the IEP team's recommendations, the district shall cooperate with the California Department of Education towards achieving an expeditious resolution to the disagreement.

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During any due process hearing concerning the IEP determination, the student shall remain in his/her current or comparable placement pending resolution of the due process proceedings unless:

1. The student possesses a firearm (as such term is defined in Section 921 of Title 18 of the United States Code) on school premises or at a school-related activity, then the student may be placed in an interim alternative educational placement for a maximum of 45 days.

During this 45-day time period, the parents may request a due process hearing to contest the change in placement; however, the student shall remain in the interim alternative educational placement during the pending due process proceedings.

2. He/she has been suspended for up to, but not more than, 10 consecutive days because he/she poses an immediate threat to the safety of himself/herself or others.
3. The parent/guardian agrees to a change in placement and confirms this in writing.
4. A child is dangerous and a court order has been obtained permitting a change in placement.

The expulsion hearing shall not be conducted, and the 30-day expulsion proceedings time limit shall not commence, until after completion of:

1. The pre-expulsion assessment,
2. The IEP meeting, and
3. Due process hearings and appeals, if initiated. (Education Code 48915.5)

The Board may expel a special education student only if an individualized education program team has determined that 1) the misconduct was not caused by, or was not a direct manifestation of, the student's identified disability; and 2) the student was appropriately placed at the time the misconduct occurred. (Education Code 48915.5)

The Board shall consider the recommendations of the IEP team when developing a rehabilitation plan for an expelled special education student.

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**Readmission**

Readmission procedures shall parallel those used for nonhandicapped students. The Superintendent or designee shall determine whether a new IEP needs to be established when the student is readmitted.

The Superintendent or designee may consider the comments of the student's IEP team when developing recommendations to the Board regarding a request for readmission.

**Suspension of Expulsion**

The Board's criteria for suspending the enforcement of an expulsion order shall be applied to special education students just as they are applied to regular students. (Education Code 48917)

*Legal Reference:*

EDUCATION CODE

35146 *Closed sessions (re suspensions)*

35291 *Rules (of governing board)*

48900-48925 *Suspension and expulsion*

56320 *Educational needs; requirements*

56321 *Development or revision of individualized education program*

56340-56347 *Individual education program teams*

56505 *State hearing*

GOVERNMENT CODE

54950 *(re closed sessions)*

PENAL CODE

626.2 *Entry upon campus after written notice of suspension or dismissal without permission*

UNITED STATES CODE, TITLE 20

1415 *Procedural Safeguards*

CODE OF FEDERAL REGULATIONS, TITLE 34

104.35 *Evaluation and Placement*

300-345 *Parent participation*